

119.
No. 1417

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

APOSTLES ON APPEAL.

ST. PAUL FIRE AND MARINE INSURANCE COMPANY,

Appellant,

vs.

THE PACIFIC COLD STORAGE COMPANY,

Appellee.

VOL. II.

(Pages 401 to 803, Inclusive.)

Upon Appeal from the United States District Court
for the Western District of Washington,
Northern Division.

FILED

FEB - 4 1907

No. 1417

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

APOSTLES ON APPEAL.

ST. PAUL FIRE AND MARINE INSURANCE COMPANY,

Appellant,

vs.

THE PACIFIC COLD STORAGE COMPANY,

Appellee.

VOL. II.

(Pages 401 to 803, Inclusive.)

Upon Appeal from the United States District Court
for the Western District of Washington,
Northern Division.

(Testimony of Captain B. D. Newcomb.)

fall and during the breaking up of the ice in the spring?

A. Yes, sir.

Q. Were you on service on that end of the river during the winter of 1903-04? A. Yes, sir.

Q. What steamer were you on during the months of September and October?

A. Steamer "Louise."

Q. To what Company did she belong?

A. Northern Commercial.

Q. Did she make a trip from St. Michaels to Dawson during the fall? A. Yes, sir.

Q. What time did she leave St. Michaels?

A. If I remember right, I think about the 27th of August was the time she left St. Michaels.

Q. Did she reach Dawson?

A. She did with part of her load.

Q. What time did you reach Dawson?

A. Well, it was about the first of October.

Q. Did she have a tow? A. Yes, sir.

Q. Is it customary for steamers on that river to have a tow in going up from St. Michaels to Dawson?

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial.

A. It is for the "Louise" and tow-boats.

Q. How much cargo did you leave St. Michaels with on that trip?

(Testimony of Captain B. D. Newcomb.)

Mr. BRONSON.—Same objection.

A. In the neighborhood of twelve hundred tons.

Q. How much was on the "Louise" herself?

A. She carries no cargo; we carry it on barges.

Q. Did you get any of the cagoes through to Dawson?
A. Delivered two barges.

Q. Did you see the "Robert Kerr" on that trip?

A. No, sir.

Q. You know the steamer, do you?

A. Yes, sir.

Q. Do you know the point where she wintered during that winter?
A. I do.

Q. Was she in a place of safety?

A. Not considered as such.

Q. In your judgment was she in a place of safety?

A. No, sir.

Q. Wherein was her danger?

A. In the break-up in the spring.

Q. Well, just describe what her danger would be in the break-up in the spring?

A. Why, the ice was very likely to mash her—wreck her and carry her down the river some distance as it had done other boats when it broke up.

Q. What would you say about her cargo, whether it was safe on board the "Kerr" if left there during the winter?

A. I would not consider it safe.

(Testimony of Captain B. D. Newcomb.)

Q. Do you know the point where the "Kerr" is said to have been stranded between the 22d and 28th of September, do you know the bar that she was supposed to have been on?

A. Well, I don't know just the bar. I know the neighborhood very close to that bar.

Q. Assuming that she got off the bar about the 28th of September, what place could she have gone to where she would have been in greater safety than the place she did moor for the winter?

MR. BRONSON.—Objected to as incompetent, irrelevant and immaterial and because based upon the assumption that the witness knows the place in question, whereas the testimony of the witness is that he does not know it.

A. Why, there was not any better than what she did find.

Q. Would it have been possible for her to have gone down the river and reached a point of any greater safety?

A. Well, no, not necessarily. I don't think she could do it.

Q. Would she have been able to have gone down the river after that time, the 28th of September?

A. I don't consider it that way because we refused to go.

(Testimony of Captain B. D. Newcomb.)

Q. How was the stage of water during that fall as compared with previous seasons, higher or lower?

A. The lowest water known in the history of navigation on the river.

Q. Did the ice begin forming in the river so as to obstruct navigation during that season, earlier or later than prior seasons?

A. Well, the ice did not form, I don't think, much sooner, but the water was so low—that was the main trouble.

Q. Did you have to fight ice or break through ice to get to Dawson on the "Louise"?

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial.

A. Yes, sir; we did not get to Dawson.

Q. Do you know where the "Lightning" wintered that winter? A. Yes, sir.

Q. Did you see her in the spring when you went by in the spring?

A. No. I was in bed sick when we went by that place in the spring.

Q. You know where it was?

A. I know exactly where it was.

Q. Did you see her at any time soon afterwards?

A. I have not been back this season since.

Q. You can't speak of your own personal knowl-

edge then as to her condition? A. No, sir.

(Testimony of Captain B. D. Newcomb.)

Q. Captain, if you had been the owner of a cargo on board the "Kerr" of a perishable nature, of the value, at first cost, of approximately sixty-five thousand dollars, exclusive of the freight from Puget Sound up to that point, and you would have found it would have cost approximately fifty thousand dollars to move it overland to Dawson, would you as such owner have left it on board the steamer and and took the risk of saving it or have incurred the expense of moving it overland to Dawson?

Mr. BRONSON.—I object to that question as calling for a state of facts not shown to exist, as calling for the conclusion of the witness and as incompetent, irrelevant and immaterial.

A. I would have taken the chance of moving the cargo.

Q. Captain, have you any photograph showing the break-up of the ice at about or near the point where the "Kerr" was wintered?

A. Yes, sir; I have one here.

Q. For what season was that?

A. That the spring of 1902.

Q. (Photograph shown witness.) Is this the photograph that I exhibit to you?

A. Yes, sir, that is the one.

Mr. BOGLE.—I want to offer that in evidence,

(Testimony of Captain B. D. Newcomb.)

but I want to withdraw it in order to have a copy made.

Mr. BRONSON.—We object to it as incompetent, irrelevant and immaterial.

(Photograph referred to offered in evidence, marked as Libelant's Exhibit "A," and returned and filed herewith.)

Q. How far was it to the place where the "Kerr" was to this point that the picture represents?

A. Not over five hundred feet above it.

Cross-examination.

Q. (Mr. BRONSON.) You say this picture is taken at a point 500 feet above or below?

A. Below.

Q. Below the point? A. Yes.

Q. Do you know where the "Kerr" was wintered, did you see here there?

A. No, I didn't see her there.

Q. All you know is that you are relying on what other people told you?

A. I know where they told me she was.

Q. Would not that picture represent approximately the conditions in a hundred different places on the Yukon River on the break up of the ice?

A. Why, it might.

(Testimony of Captain B. D. Newcomb.)

Q. It looks just like that right around Dawson City, does it not, sometimes?

A. No; it never has been that bad at Dawson.

Q. Well, it has been of a similar character, has it not? A. Not as bad.

Q. Not as bad as that, but it has been of a similar character, I say.

A. No, I think not.

Q. What is it, smooth, polished ice in front of Dawson City?

A. Oh, the ice is all ground up, but does not fill the bank twenty and thirty feet high. If you had that at Dawson, you wouldn't have any Dawson.

Q. Have you ever known a boat to be wrecked on the Yukon River by the ice and destroyed?

A. Not totally destroyed.

Redirect Examination.

Q. (Mr. BOGLE.) Have you ever known a boat wrecked on the Yukon River to the extent that any cargo on board would have been destroyed?

A. Yes, sir.

Q. Have you ever known a boat on the Yukon River to winter at any point along the river with cargo aboard? A. No, sir.

Q. You were asked about the ice of Dawson. Steamers do not winter in the river in Dawson, do they?

(Testimony of Captain B. D. Newcomb.)

A. They have, some, right up at Water and Front; it is a big eddy that makes it comparatively safe.

Q. They have constructed ways at Dawson now, have they not?

Mr. BRONSON.—Objected to as leading.

A. There are ways there.

Q. And the bulk of the steamers that winter at Dawson winter in the slough off from the river?

A. Yes, sir.

Q. That slough, Captain, is protected from the current by a bank up above where the steamers are located? A. Yes, sir.

Q. And so long as that bank lasts it is impossible for the flow of ice coming down the river to break in where the steamers are? A. Yes, sir.

Q. You say you did not see the "Kerr." How far ahead of the "Kerr" did you pass up along this point that she was reputed to have wintered?

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial.

A. She came the next day after we left, or that same day, rather, the evening of that same day—we left in the morning and she came the evening of that same day.

Q. Do you know how much draft the "Kerr"

(Testimony of Captain B. D. Newcomb.)

would have with a cargo of, say, two hundred and fifty tons?

A. Not for a certainty, but I should judge—

Mr. BRONSON.—I object to the witness testifying if he does not know.

Q. Give your best judgment of it. You know the steamer, do you not, the “Kerr?”

A. I know the steamer. I should judge about four feet of four and a half.

Recross-examination.

Q. (Mr. BRONSON.) What steamer did you say you was pilot on? A. The “Louise.”

Q. How does the “Louise” compare with the “Kerr?” A. You mean in size?

Q. Yes.

A. Why, I think there is very little difference in the size of them.

Q. How do they compare in power?

A. The “Louise” is a good deal more powerful than the “Kerr.”

Q. Where was it you say she left the day after you did?

A. Circle City; she came to Circle City the day after we left—we left in the morning and she got there that evening.

(Testimony of Captain B. D. Newcomb.)

Q. As a matter of fact all the vessels that navigate the Yukon River expect to freeze into the ice some place or other, do they not?

A. In some slough; otherwise—

Q. As a matter of fact sometimes they freeze in the river itself, do they not?

A. Sometimes.

Q. These sloughs are very often overflowed, or the heads of them are, in the break up in the spring, are they not?

A. Not so often the heads of them, no.

Q. What?

A. Not the heads of them, no.

Q. Well, does not the water very often and the ice sweep right over the tops of the sloughs?

A. Not the ones that are considered safe.

Q. Well, it does over some, does it not?

A. Over some it does, yes, some sloughs.

Q. Some are considered safer than others, and vessels aim to get in the best slough they can find, but they aim to stay in the river that winter, that is, in the river or the sloughs, they aim to stay in the Yukon water.

A. Stay in the river or the sloughs. Lots of them they pull out where they can get to the ways.

(Testimony of Captain B. D. Newcomb.)

Reredirect Examination.

Q. (Mr. BOGLE.) With the stage of water such as it was at the time the "Kerr" reached Circle, was there any slough that she could have got into where she would have been safe? A. No, sir.

Q. Could she have gone down the river and reached any point of greater safety?

A. Not at that time.

Q. What would have been the trouble?

A. There was not water enough to get down with any load on her.

Q. You were asked if there were not some sloughs along the river where the water in the break-up in the spring ran over the head of the slough. Do vessels ever moor in those sloughs.

A. Not unless they are compelled to.

(Testimony of witness closed.)

And thereupon a recess was taken until four o'clock P. M., the same day.

January 26th, 1905.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

Captain JULIUS STANKUS, produced as a witness in behalf of the libelant, being first duly cautioned and sworn, testifies as follows:

Q. (Mr. BOGLE.) State your name.

(Testimony of Captain Julius Stankus.)

A. Julius Stankus.

Q. Where do you reside? A. Anacortes.

Q. What is your business?

A. Pilot on the Yukon River flats.

Q. How long have you been engaged in that business? A. Since '98.

Q. Each season since that time?

A. Yes, sir.

Q. You say pilot on the Yukon flats; how much of the Yukon River does that include?

A. Ninety miles, between Fort Yukon and Circle.

Q. With what company are you employed?

A. The Northern Commercial Company—the N. C. Co.

Q. Are you familiar with the condition that prevail on the Yukon River during the fall, about the time of the close of navigation, and in the spring, at the time of the break-up of the ice?

A. I am, a little bit.

Q. Do you know the steamer "Robert Kerr?"

A. Yes.

Q. Do you know the point where she wintered during the winter of '93-4? A. Yes, sir.

Q. How far was that above Circle City?

A. She was at Circle City.

Q. Did you see her after she was tied up there?

A. No, sir, I did not.

(Testimony of Captain Julius Stankus.)

Q. Were you along the river during the spring of 1902, before the break-up of the ice?

A. Yes, sir.

Q. What was the condition of the ice after the break-up at the point where the "Robert Kerr" was tied up for the winter of 1902 and 1903?

Mr. BRONSON.—I object to that as irrelevant, immaterial and incompetent.

A. Well, it was pretty rough around there. There was no boat could ever stay around that place.

Q. (Mr. BOGLE.) How had it been during the previous years, during the time you were familiar with the river?

(Same objection.)

A. The other years that I seen there, wintering at Circle City, except the winter that the "Robert Kerr" was there, the ice would run through that slough, just like you could not see any water at all—it was just like a log was going through the slough; but the winter that the "Robert Kerr" was there there was no ice running there, through there, and it was fine.

Q. Was there ever any year that the ice broke up that a boat could have been saved at that point during the time you have been there on the Yukon River,

(Testimony of Captain Julius Stankus.)

except the spring of 1904 at the time the "Kerr" was there?

(Objected to as irrelevant, immaterial and incompetent.)

A. Well, any winter I seen there the ice has been very rough; a boat would have a poor chance to stay there.

Q. Captain, from your knowledge of the river and the conditions of the ice at that point on the break-up in the springs, would you have considered that through the winter of 1903 and 1904 that the "Kerr" was in a safe position or a dangerous position?

(Objected to as irrelevant, immaterial and incompetent.)

A. Well, about the safest place there was anywhere around, or anywhere near it; about as safe as they could be there.

Q. The question is, was she in a safe place in your judgment?

A. Well, it was safe in the fall, but it is not very safe in the spring.

Q. You have known boats to winter along the river in other cases, have you, being caught in the ice before they got through to their destination.

A. There has been boats wintered at Fort Yukon one winter. What is the custom along the river when

(Testimony of Captain Julius Stankus.)

a boat is caught in the ice, as to leaving the cargo on board or taking it off the boat?

(Objected to as irrelevant, immaterial and incompetent.)

A. They take it out, of course, it is dangerous to leave it inside as she draws so much water, but if the cargo is taken out the boat is lightened, if the cargo is taken out, so that it won't draw too much water.

Q. Have you ever known an instance where the cargo was left on board a boat that wintered at any point along the river?

A. Well, once, there was two boats wintered, and one took the cargo out and the other didn't, but the boat came out all right; it happened that the ice did not break.

Q. In the judgments of the masters and pilots who are best posted about the Yukon River, is it considered safe to leave your cargo on the boat that is caught in the ice in the river?

Mr. BRONSON.—I object to that as irrelevant, immaterial and incompetent and calling for a conclusion of the witness and based on hearsay evidence.

A. No, sir, it is not considered safe.

Cross-examination.

Q. (Mr. BRONSON.) Did you see the "Rogert Kerr" there at Circle City where she was tied up?

(Testimony of Captain Julius Stankus.)

A. I didn't see her tied up there; I saw her before she got tied up.

Q. You saw her when she was at Circle?

A. Before she got to Circle City; she could not get to Circle City until they had to lighten her up.

Q. You did not see her after she got to Circle City?

A. I didn't see her after she got to Circle City.

Q. As a matter of fact, you know she laid there at Circle City in perfect safety that winter?

A. I saw where she had been lying.

Q. She didn't; didn't she—say yes.

A. How's that?

Q. Answer yes or no, whether or not.

A. I didn't see her at the time she was lying there.

Q. You didn't see her?

A. No, sir, not in Circle City.

Q. Circle City is one of the principal points on the Yukon River, is it not? A. Yes, sir.

Redirect Examination.

Q. (Mr. BOGLE.) Circle City is a trading point, isn't it?

A. Trading point, trading and mining point.

Q. Is that a point where vessels spent the winter?

A. No, no. It is a mining point. Of course, they stay and leave some cargo and freight out there; they had a few stores there.

(Testimony of Captain Julius Stankus.)

Q. Is there any point within sixty or seventy miles of Circle City where a vessel could spend the winter in safety? A. No, sir.

Q. (Mr. BRONSON.) As a matter of fact, don't vessels spend the winter sometimes within sixty or seventy miles of Circle City?

A. No, sir; no boat in this country that I know of.

Q. Well, the "Robert Kerr" spent the winter there all right.

A. One year she spent at about thirty-five miles below there, but she was forced—she got stuck and she could not get away anywhere else, in '98, but she could not tell that she would be there.

Q. (Mr. BOGLE.) Do you know what bar the "Kerr" stranded on? A. Yes.

Q. What bar was it?

A. Two Pipe Slough.

Q. Do you know how long she was on that bar?

A. Well, I don't remember how long it was; it was quite awhile, I don't remember exactly.

(Testimony of witness closed.)

Captain HENRY POLIS, produced as a witness in behalf of libelant being first duly cautioned and sworn, testifies as follows:

Q. (Mr. BOGLE.) Where do you reside, Captain? A. Anacortes.

(Testimony of Captain Henry Polis.)

Q. What is your business?

A. Steamboat pilot.

Q. Have you had any experience on the Yukon River? A. I have been there since '98.

Q. As master? A. No, sir, as pilot.

Q. Are you engaged with either of the trading companies up there?

A. I have worked for both of them, sir.

Q. Do you confine your pilotage to the flats, or the entire river?

A. The entire river, from Dawson to St. Michaels.

Q. Are you familiar with the river at all stages of water during all the open season?

A. Pretty well.

Q. And with the condition when it freezes up and when it breaks up in the spring? A. Yes.

Q. Did you see the "Robert Kerr" during the winter of 1903-'04, after she was frozen in for the winter? A. No, sir.

Q. Do you know where she did winter?

A. Yes.

Q. Was there any other point that she could have reached after the first of October where she would have been safer than she was at the point where she spent the winter?

A. Not any place that I know of.

(Testimony of Captain Henry Polis.)

Q. From your knowledge of the conditions that prevail at that point during the break-up of the ice in the spring, would you consider, during December and January, that she would be safe on the break-up of the following spring, or otherwise?

A. No, sir, I don't think she would be safe.

Q. Captain, if you had had perishable cargo on board the "Robert Kerr" at the time she was frozen up there in the winter and during that winter, which represented a first cost down on the sound here of say, sixty-five thousand dollars, would you, knowing the conditions as you did know them, have considered it safe to leave that cargo on board the "Kerr" until the break-up of the ice in the spring?

Mr. BRONSON.—I object to that as irrelevant, immaterial and incompetent.

A. I don't think it would be safe.

Q. Do you know how the ice jammed about that point during the break-up in the spring of 1902?

A. No, I do not; but it is due to the way the ice is above; if it jams above, that is to the right of the island, it will chute the ice down through the slough more, and if it does not jam there, it is more apt to go outside. That is the way the ice acts, and you can't tell which way it will come.

(Testimony of Captain Henry Polis.)

Q. As a matter of fact, if it does jam so as to come down through the slough, could any vessel the size and construction of the "Kerr" live through it?

A. I am afraid not.

(Objected to as irrelevant, immaterial and incompetent.)

Q. Do you know where the "Kerr" was reported to have stranded on that strip, what bar it was?

A. No, sir.

Q. Now, Captain Polis, assuming that the "Kerr" was stranded on the bar at Two Pipe Slough, from the 22d to the 28th of September, when she relieved herself, was there any chance for her at that time to have reached any other point where she would have been safer than the point where she was moored at during the winter?

(Objected to as irrelevant, immaterial and incompetent.)

A. Not unless she would have backed down the river.

Q. Could she have gone down the river at that time? A. I don't think so.

Q. How was the stage of the river during the fall of 1903? A. The water was very low.

Q. Did the low water come earlier than usual or later than usual?

A. I think it came a little earlier than usual.

(Testimony of Captain Henry Polis.)

Q. Was it lower than usual? A. Yes, sir.

Q. In your judgment, would the "Kerr" have been able to have gotten up the river to Dawson on that trip that later, after getting off that bar?

Mr. BENSON.—I object to that as irrelevant, immaterial, incompetent, the witness not having been shown to be competent.

A. What day did she reach Circle?

Mr. BRONSON.—I object.

Mr. BOGLE.—The 10th of October.

A. I don't think she would be.

Q. Assuming that the "Kerr" reached Circle on the 10th of October, in your judgment, was it possible for her to have gotten through to Dawson?

(Same objection.)

A. No, sir.

Q. Is it customary on the Yukon River when a vessel is caught at such a point as this in the freeze-up to leave the cargo on board or to unload it?

A. To unload it off.

Q. Do you know where the "Lightning" spent that winter? A. Yes, sir.

Q. Did you see her in the following spring in the break-up of the ice? A. Yes, sir.

Q. What was her position then?

(Testimony of Captain Henry Polis.)

A. Well, she was shoved away out in the ice and she was blocked up with timbers underneath her, and I came down the river that spring and I saw her shoved off there, and she was in pretty bad shape, I should judge.

Q. If she had had any cargo in her would it have affected her?

(Objected to as irrelevant, immaterial and incompetent.)

A. I should think it would have broken her in two.

Cross-examination.

Q. (Mr. BRONSON.) You would not swear positively, would you, that she could not go down the river?

A. Well, that is something I could not swear to what they could have done; I should not think it would be good judgment to have gone down the river.

Redirect Examination.

Q. (Mr. BOGLE.) You tried to get down with the "W. H. Isham" and failed.

A. We had hard work to get down the bar just below. We left our tow at Fort Yukon and turned back. We were towing two barges and turned back to St. Michaels.

Q. Did you succeed in getting into St. Michaels?

(Testimony of Captain Henry Polis.)

A. We did—we didn't get to St. Michaels—but we got below—just below St. Michaels—below the canal—we didn't make the canal—due to the heavy storm.

Q. How early did you turn back?

A. It was the 27th or 28th.

Q. At what point were you at that time?

A. At—we went back and we waited at Ramport for a crew at that time.

Q. When you turned back on the 27th where were you, how far from Circle?

A. We must have been two hundred miles.

Q. Below Circle? A. Yes sir.

Q. (Mr. BRONSON.) What speed do boats make down the river.

A. Twelve or thirteen miles an hour at that stage of water.

Q. (Mr. BOGLE.) At that season you have to tie up at night?

A. Yes; they most all do tie up; still I have run a good deal at nights; but the most of them go to the bank, but I have gone a good deal at nights.

(Testimony of witness closed.)

Whereupon the further proceedings are adjourned until Saturday, January 28th, 1905, at 10 A. M.

Seattle, Washington, 10 A. M.

Saturday, January 28, 1905.

Present: Mr BOGLE, for Libelant.

Mr. BRONSON, for Respondent.

Continuation of proceedings pursuant to adjournment, as follows, to wit:

Mr. CHARLES E. BRYANT, produced as a witness for and on behalf of libelant, having been first duly cautioned and sworn, testified:

Q. (Mr BOGLE.) State your name, age and residence.

A. Charles E. Bryant; Dawson; 28 years.

Q. In what business are you employed in Dawson?

A. I am the manager of the Pacific Cold Storage Company at Dawson and Yukon Territory.

Q. How long have you been in the employ of that company? A. Almost four years.

Q. In what capacity are you employed in Dawson and the Yukon Territory at the present time?

A. As manager of Dawson and Yukon Territory.

Q. Do you have general charge and management of the business of the company in that territory?

A. Yes, sir.

Q. How long have you had charge of it?

A. Since September 1st, 1903.

(Testimony of Charles E. Bryant.)

Q. Where were you employed prior to that and in what capacity?

A. I was resident manager for the Pacific Cold Storage Company at Nome.

Q. During what period?

A. From July 1st, 1902, to August 22d, 1903.

Q. Prior to that time where were you employed?

A. St. Michaels.

Q. In what capacity?

A. As resident manager for the Pacific Cold Storage Company.

Q. For how long?

A. From June 1st, 1901, to June 25th, 1902.

Q. What is the business of the Pacific Cold Storage Company in Alaska and the Yukon Territory?

A. The handling of cold storage products, meats and so forth, livestock, etc.

Q. What facilities have they in the Yukon Territory for handling refrigerated products?

A. Do you want the entire territory?

Q. Yes, in a general way; I don't want a list of it.

A. Well, they have a large cold storage plant at Dawson, capacity of about eight hundred tons—five hundred tons, I think, would be nearer—five or six hundred tons; they are also equipped with the refrigerated steamer "Robert Kerr" for handling their goods on the Yukon River from St. Michaels.

(Testimony of Charles E. Bryant.)

Q. Does that company in its business in the Yukon Territory maintain markets, slaughter houses and selling stations?

A. They maintain markets in Dawson and on the creeks in the vicinity of Dawson; also, have a station at Fort Egbert, one at Gibbon and one at St. Michaels.

Q. Did you at any time during the month of September, 1903, get word by wire to the effect that the steamer "Robert Kerr" had stranded on the Yukon river on her upward voyage? A. I did.

Q. About what time was it you got that word?

A. About September 30th, as near as I can remember.

Q. What steps, if any, did you, as the representative of the Pacific Cold Storage Company take to relieve or in endeavoring to get the "Kerr" relieved from her stranded condition?

A. I received a wire, as I stated, about the 30th of September, from Captain Smith, master of the steamer "Robert Kerr"; the wire had been delayed some three or four days on account of the facilities that we have for telegraphing in that country, advising me to send him relief at once, as he was stranded.

Q. Approximately what cargo did the "Kerr" have on board at that time?

(Testimony of Charles E. Bryant.)

A. She had approximately two hundred tons, as near as I can remember—our records will show.

Q. Two hundred tons of what?

A. Of refrigerated goods.

Q. What was their character?

A. Beef, mutton, poultry—choice cuts—and butter.

Q. Now proceed and state what you did.

A. I at once opened negotiations with all the steamboat companies in Dawson and secured the services of the steamer “Lightning.”

Q. Did you make a written contract with the owners of the steamer “Lightning” for this service?

A. I did.

Q. I hand you a paper and ask you if that is a correct copy of the contract executed by you at that time?

A. It is.

Q. Where is the original?

A. On the files in the Dawson office.

Mr. BOGGLE.—I now offer this contract in evidence, proctor for the respondent waiving objections so far as its being a copy instead of the original.

Mr. BRONSON.—And subject to such waiver respondent objects to the introduction of the paper offered on the grounds that the same is incompetent, irrelevant and immaterial.

(Testimony of Charles E. Bryant.)

(Paper referred to offered in evidence, marked as Libelant's Exhibit "B" and returned and filed herewith.)

Q. Did the "Lightning" go down the river to the relief of the steamer "Kerr"?

A. Yes, sir.

Q. Did you go on the "Lightning"?

A. Yes, sir. We were delayed some two days stating the "Lightning" on account of the International laws governing Canadian Bottoms in America Territory. It was necessary to wire Washington to allow the "Lightning" to proceed to the relief of the "Kerr."

Q. Was the contract and the compensation which are provided in this contract for the services of the "Lightning" in your judgment reasonable?

Mr. BRONSON.—We object to that as incompetent, irrelevant and immaterial, and upon the ground that the witness is not qualified or shown to possess that acquaintance with the subject and knowledge thereof sufficient to qualify him to testify.

A. I considered it was very reasonable.

Q. What efforts, if any, were made to procure another steamer at that time, or were there any other steamers that were available for the service?

Mr. BRONSON.—Same objection.

(Testimony of Charles E. Bryant.)

A. There was one other steamer, the steamer "Prospector," but after negotiating with them and finding the conditions of the river they would not proceed for the same rate as the "Lightning" did.

Q. Was the steamer "Lighning" staunch and strong and properly equipped? A. Yes, sir.

Q. Did she have any cold storage facilities?

A. No, sir.

Q. Was there any steamer on the Yukon River or at Dawson, except the "Robert Kerr," that was equipped with cold storage facilities?

A. No, sir.

Q. Was there any cold storage plant at any point along the Yukon River between St. Michael and Dawson? A. No, sir.

Q. And was not at that time? A. No, sir.

Q. Where did you find the "Kerr" when you went down on the "Lightning"?

A. About 14 miles below Circle.

Q. Was she still stranded?

A. No, sir; she was lying on the bank.

Q. How long had she been relieved from her stranded condition?

Mr. BRONSON.—I object to that as incompetent, irrelevant and immaterial, and that the witness is not shown to know of his own knowledge.

(Testimony of Charles E. Bryant.)

A. I can't state how long she had been relieved from her stranded condition, but the captain informed me when I boarded the "Kerr" that he had tried the different channels in the river above there and found it, owing to the condition of the river, impossible to proceed without having some of his cargo removed.

Mr. BRONSON.—I move to strike out the answer to that question as based upon hearsay evidence and as not responsive to the question.

Q. What was the date when the steamer "Lightning" reached the "Kerr"?

A. Seventh day of October, 11:40 A. M., I believe the hour was.

Q. Who was the master of the "Kerr" at that time? A. Captain E. W. Smith.

Q. Do you know how long he has acted as master or pilot on the Yukon River?

A. For the past four years to my own knowledge.

Q. What is his reputation as to competency as a master on that river?

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial.

A. From all the information that I have been able to observe with reference to his ability he is spoken of very highly.

(Testimony of Charles E. Bryant.)

Q. Did the "Kerr" have a full compliment of officers and crew on that voyage?

A. She did to the best of my knowledge and belief.

Q. What was the condition of her cold storage plant at that time?

A. It was in first-class condition, judging from the condition of the meat when I commenced to transfer it to the "Lightning."

Q. What was the condition of her machinery, engines and boilers?

A. They were in first-class condition to the best of my knowledge.

Q. How long had the "Kerr" been operating on the Yukon River?

A. Four years, to my knowledge. I believe she was operated before I went to St. Michael in the season of 1900, but I am not positive.

Q. What was the stage of the water at the time the "Lightning" reached the steamer "Kerr"?

A. The water was falling every day.

Q. What was the draught of the "Kerr" with the cargo that she was then carrying?

A. I think she was drawing about 5 feet, but I am not positive.

Q. From your knowledge of the condition of the river and of the stage of the water and the draught

(Testimony of Charles E. Bryant.)

of the "Kerr" was it possible for the "Kerr" to proceed up the river with the cargo then on board.

Mr. BRONSON.—I object to that question on the ground that the witness is not shown to be qualified to pass an opinion upon the subject matter of the question.

A. No, sir, it was not, as there were other boats drawing much less water which was stranded in the Yukon flats and which were being lighted at the same we lighted the "Kerr."

Mr. BRONSON.—I move to strike the answer as not responsive to the question, particularly the latter part of it.

Q. During the time you have been in the employ of the Pacific Cold Storage Company at St. Michael, Nome and Dawson, has it been any part of your duty to superintend the operation of the steamers on the Yukon River? A. It has.

Q. Is that a part of your duty as a manager in the Yukon Territory? A. Yes, sir.

Q. In what business had you been engaged prior to the time you went into the employ of the Pacific Cold Storage Company?

A. Transportation business.

Q. For how long? A. About five years.

Q. You are familiar with steamers, are you?

(Testimony of Charles E. Bryant.)

A. Yes, sir.

Q. And you have a general knowledge of their engines, boilers and machinery?

A. I am not as familiar with the engine and boilers as I am with the hull. I have a general knowledge of steamers.

Q. During the four years you have been in Alaska and the Yukon territory have you been familiar with the Yukon River at the various seasons of the year?

A. Yes, sir.

Q. Now when you found the "Kerr" at this point what did you do?

A. We proceed at once to take out a part, the most valuable part, of her cargo; that was the poultry and the choice cuts; we loaded about 60 tons aboard the "Lightning" and the two steamers proceeded to Circle. Upon reaching the twelve Mile Bar, owing to the low stage of the water, the "Kerr" was unable to pass over the Bar.

Q. Is the Twelve Mile Bar below Circle?

A. Twelve miles below Circle. About twelve miles below Circle.

Q. Well, what did you do?

A. Finding that the "Kerr" could not get over the Bar we proceeded at once with the "Lightning" to Circle, unloaded her cargo there that night, the night of the 7th, left Circle the next morning, the

(Testimony of Charles E. Bryant.)

morning of the 8th, before daylight; upon reaching the "Kerr" we commenced at once to further lighten her, unloading mostly poultry and choice cuts, which I considered the most valuable part of the cargo. We proceeded again to Circle, but upon reaching the bar the "Kerr" was then unable to go over. The "Lightning" proceeded on to Circle and cached some 30 or 40 tons she then had on board; went back the next morning, the morning of the ninth, to further lightening her, both of us proceeded to Circle, arriving there on the afternoon of the 10th of October.

Q. You say the "Kerr" was unable to cross the bar; was that on account of the draught or what?

A. On account of the low stage of the water or her draugh. We arrived in Circle on the afternoon of the 10th and we commenced at once to load the "Lightning" with the cargo which she had cached, in order to make up her cargo for Dawson as per her contract. We loaded mostly poultry and choice cuts on the "Lightning," as I considered that was the most valuable part of the cargo and the part we wanted to save, if possible. The "Kerr" commenced loading what cargo the "Lightning" could not get on board and Captain Smith and I went up to investigate the conditions of wintering the "Kerr" there, after we found out the difficulties and dangers boats

(Testimony of Charles E. Bryant.)

had had up the river and the condition of the river at that time.

Q. What was that condition that you ascertained at that time?

A. Well, the "Susie," which had sailed from Circle on the morning of the 10th, I believe it was on the morning of the 10th—yes, the morning of the 10th—had sunk 25 miles above Circle.

Mr. BRONSON.—Not to interrupt the narrative form of the testimony, I would like to have it considered that my objection is preserved through out this testimony from the witness based upon any other than his own actual knowledge.

Q. Did you subsequently see the "Susie" at the point where she had sunk?

A. No, sir. She had been raised, with the assistance of the boats belonging to the same company, and proceeded on up the river. I saw her at Eagle.

Q. Go ahead with your statement?

A. The "Sarah" had also struck the rocks some 80 or 90 miles above Circle and was in a very dangerous position. Taking these facts into consideration, after advising with Captain Smith, the Master of the Steamer "Robert Kerr," we decided it was far safer for the protection of the cargo and the steamer to place her in winter quarters at Circle, which we did on the morning of the 11th of October, and proceeded

(Testimony of Charles E. Bryant.)

with the steamer "Lightning," which was drawing much less water than the "Kerr," for Dawson.

Q. At what point at Circle was the "Kerr" placed in winter quarters? A. In the slough at Circle?

Q. Above or below Circle?

A. Just above the town.

Q. Were there any warehouses in Circle where these goods could have been stored?

A. There no one warehouse there that would have held the cargo. There were a few log cabins with the doors and windows out.

Q. From the knowledge that you have of the Yukon River, and from all the information you were able to obtain at the time, was there any other point at which the "Kerr" could have been placed in winter quarters where she would have been safer than at the point where you did place her?

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial.

A. I obtained all the information possible from the residents of Circle and the captains of the different steamers that had been there, and the slough was the only place which we could get her into at that season in order to get her out of the main river.

Q. You proceeded up the River on the "Lightning," did you? A. Yes, sir.

(Testimony of Charles E. Bryant.)

Q. Would have been possible for the "Kerr" to have gotten through to Dawson?

A. No, sir. I considered that my starting the "Kerr" out for Dawson, that owing to the condition of things, the latness of the season and the early closing of navigation, that we would have been taking a chance of losing both the "Kerr" and the cargo, as other boats were being stranded on their trip between Circle and Dawson.

Q. Was there any ice forming in the river at the time that the "Kerr" was placed in winter quarters?

A. Forming along the banks.

Q. What amount of cargo remained on the "Kerr"?

A. About 90 tons, as near as I can remember.

Q. Was it all of refrigerated products?

A. Yes, sir.

Q. Give a description of the slew in which she was moored, explaining what protection it afforded to the steamer and how the slew lay with reference to the channel of the river?

A. There was a bar, a large bar, at the head of the slew cutting off the main current of the Yukon River, and also a large island just at the head of the bar to the left of the slough which we considered would protect the "Kerr" from any damage from any fall run of ice before the close of the season—before the

(Testimony of Charles E. Bryant.)

freeze up. This slough is about 400 yards from the N. C. Company's post at Circle.

Q. Are you familiar with the conditions on the Yukon River at the time of the break-up of the ice in the spring? A. I am.

Q. How many seasons have you been in a position where you could witness the break-up or where you came in daily contact with those who had been in contact with it? A. Four seasons.

Q. Explain how it is that vessels moored along the Yukon River are exposed to danger on the break-up of the ice in the spring.

A. The ice runs very heavy at the break-up and jams, which piles the ice up on the banks.

Q. How large a field of ice accumulates back of these ice jams?

A. To my own knowledge I have seen it accumulate for 10 miles. In other words, I have seen a jam that held ice running in the Yukon River for 10 days that was from 10 to 12 miles long.

Q. How high does the ice pack up in these jams above the water?

A. Thirty or forty feet.

Q. Does it extend across the entire river?

A. In some cases it does. It depends on the river a great deal, whether there are any sandbars and the

(Testimony of Charles E. Bryant.)

condition of the river and the stage of the water at the time of the jam.

Q. Was the "Kerr" in your judgment in a place of safety upon the break-up of the ice in the following spring?

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial; the witness is not shown to be qualified to state.

A. No, sir. I considered that she was in a place of safety during the fall.

Q. What would have been the danger in the spring?

A. Of the ice jamming and coming down through the slough to the head of the island, which it had done in previous years.

Q. Did you at that time or during that winter make inquiry of those who were most familiar with the river and the conditions ascertain the extent of the danger to which the "Kerr" would be exposed in the break-up in the spring, and if so, what information did you get?

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial.

A. I did. I interviewed a number of captains of Yukon River steamers and also the superintendents of navigation for the two companies.

(Testimony of Charles E. Bryant.)

Q. Name the two companies?

A. The N. A. T. & T. Company and the N. C. Company. From the information that I got I considered that it was advisable if we wanted to save the cargo of the "Kerr" to remove it during the winter months, of which facts I advised the company in Tacoma, and they notified me to remove the cargo.

Q. Did you ascertain from those who were familiar with the facts in what manner the ice had broken up in the spring of 1902, and in the spring of 1903, at the point above this slough, as to how the ice came down after the break-up?

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial.

A. I was told that the steamer "Isabella" and one other steamer had been placed in winter quarters in the slough at Circle and both had been carried down the stream or up on the bank and that it cost thousands of dollars to replace them in the water. In their opinion if we left the cargo on board of the "Kerr" we would be running a great risk in losing the same.

Mr. BRONSON.—I move to strike out the answer as based upon hearsay evidence.

Q. About how long does the warm weather along the Yukon River precede the break-up of the ice?

(Testimony of Charles E. Bryant.)

A. About six weeks.

Q. How high does the temperature get during that time?

A. Seventh to eighty degrees above zero.

Q. What would be the effect upon refrigerated products such as those that were on board the "Kerr," exposed to that temperature?

A. They would have been a complete loss.

Q. What length of exposure would have been required to result in their total destruction?

A. Oh, about a week, if that long.

Q. Did you proceed up the river on the "Lightning"?

A. I did.

Q. What was your reason, Mr. Bryant, for putting a portion of the cargo on the "Lightning"?

A. I considered from what I could learn from others of the river that we would be able to reach Dawson with a portion of that cargo.

Q. What was the temperature at that time, above or below freezing?

A. Below freezing.

Q. Usually does the temperature remain below freezing from that time on during the entire winter?

A. As a general thing it does.

Q. Well, when you proceeded up the river with the "Lightning" did you succeed in getting through?

A. No, sir.

Q. Why not?

(Testimony of Charles E. Bryant.)

A. The ice commenced running, and the captain thought he was taking too big a chance to continue on the voyage, and went into winter quarters.

Mr. BRONSON.—I object and move to strike the latter part of the answer relative to the statement of the witness as to what the captain thought, as hearsay.

A. At what point?

A. Washington Creek.

Q. How far is Washington Creek below Dawson along the river?

A. About 187 miles—180 or 187 miles.

Q. What would be the distance from Dawson down the river to where the “Kerr” wintered?

A. Two hundred and ninety-two miles.

Q. Did the “Lightning” have any difficulty in proceeding up the river with the ice and the low stage of water?

A. She did. On the morning of the 13th, at about 4 A. M., the captain of the “Lightning” came to my room and notified me that he was afraid—

Mr. BRONSON.—I object to any conversation had between the witness and the captain.

A. (Continued.)—that he was afraid he could not make Dawson, and the ice was forming on the wheel, he was afraid they would break the eccentric shafts.

(Testimony of Charles E. Bryant.)

Q. Did you go out on deck and see the condition yourself?

A. I went out on deck and after talking the matter over with the captain he said he would proceed as far as possible.

Mr. BRONSON.—I make the same objection relative to this conversation.

A. (Continued.) —and I left the “Lightning” at that point and boarded the steamer “Louise,” which was some 200 yards ahead of her taking wood.

Q. What instructions did you leave the captain of the “Lightning” in reference to the balance of his voyage.

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial.

A. I notified the captain that if he found that by lightening the boat that he could make better time to cache a part of the cargo at some cabin, and also appointed one of the men aboard of the boat to look after same. I was advised that on the evening of the 13th, or the morning of the 14th, that the captain had cached a part of the cargo.

Mr. BRONSON.—I object to all this as hearsay.

A. (Continued.) —but on account of the conditions he crossed the river to the opposite bank and went into a slough for winter quarters.

(Testimony of Charles E. Bryant.)

Q. Did you at the time you were on the "Lightning" insist upon the master making the trip through to Dawson if it was possible to do so, or did you leave that matter to his judgment entirely?

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial.

A. I told him to make every effort to get through to Dawson, which I consider that he did.

Q. How did you get through to Dawson? You say you transferred to the "Louise"; how far did she go?

A. I transferred to the "Louise" and after proceeding in the "Louise" for a little over a hundred miles, we were unable to get any further on account of a jam in the river, and I had to take to the hills and walk.

Q. How far did you walk?

A. About 70 miles.

Q. Did you encounter any considerable quantity of ice on the trip on the "Louise" after you left the "Lightning"?

A. She was in ice from the time I boarded her, or the next day.

Q. How did she make her way through it?

A. After leaving the "Lightning" she continued and broke her paddles and was forced to tie up to

(Testimony of Charles E. Bryant.)

the bank for several hours to repair them, and then proceeded to buck the ice.

Q. Did she finally get to Dawson?

A. No, sir.

Q. How far below Dawson did she tie up?

A. About 70 miles.

Q. Did she have any cargo? A. Yes, sir.

Q. What had become of her cargo?

A. She had a light barge in tow; she carries no cargo, she is a towboat.

Q. What became of her barge?

A. She left the cargo from her barge at Eagle.

Q. How far below Dawson?

A. One hundred and two miles.

Q. Now, the cargo that was on board the "Lightning" was cached at a point called Washington Creek, was it not, Mr. Bryant? A. Yes, sir.

Q. And that you say is how far from Dawson?

A. About 187 miles.

Q. Did you see the "Lightning" the next spring after the break-up of the ice?

A. I did not until she arrived in Dawson in July.

Q. If the cargo cached from the "Lightning" on shore had been left there until the opening of navigation in the spring, what would have been its condition?

(Testimony of Charles E. Bryant.)

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial.

A. It would have been totally destroyed, as the river overflowed the banks there.

Q. Was there any place it could have been put that it would have been above the water so that it would not have been overflowed?

A. Not to my knowledge, under the conditions that it was put there.

Q. Assuming that you could have found some place where it could have been put on shore above a point that would have overflowed in the spring what would have been its condition then at the opening of navigation or the break-up of the ice in the spring?

A. Been totally destroyed on account of warm weather in the spring before it was possible to move same to Dawson by steamer.

Q. Did you, acting for the Pacific Cold Storage Company, make any contract to move that cargo from Washington Creek to Dawson? A. I did.

Q. Why did you arrange to have it moved?

A. In order to save the cargo.

Q. Could it have been saved without removing it to Dawson?

Mr. BRONSON.—Objected to as calling for the conclusion of the witness, and as incompetent, irrelevant and immaterial.

(Testimony of Charles E. Bryant.)

A. No, sir.

Q. Was there any other point in that country where there were facilities for taking care of the cargo? A. Not outside of Dawson.

Q. With whom did you contract for removing that cargo? A. With H. N. Ford.

Q. Was the contract in writing?

A. It was.

Q. I hand you now a paper and ask you if that is a correct copy of the contract that you entered into with Ford for moving the cargo from Washington Creek to Dawson? A. It is.

Q. Where is the original?

A. On the files in the Dawson office.

Mr. BRONSON.—I make the same stipulation in regard to this that I did in regard to Exhibit "B."

Mr. BOGLE.—I offer this instrument in evidence, proctor for respondent having waived any objection to it on account of its being a copy and not the original, but subject to his objection that it is incompetent, irrelevant and immaterial.

(Paper referred to offered in evidence, marked as Libelant's Exhibit "C," and returned and filed herewith.)

Mr. BOGLE.—The stipulation, Mr. Bronson, is intended to cover proof of the signatures?

(Testimony of Charles E. Bryant.)

Mr. BRONSON.—Oh, yes.

Q. Did Ford carry this cargo from Washington Creek to Dawson pursuant to this contract?

A. He did.

Q. What became of the cargo that was left on board the “Kerr”?

A. We hauled all that was possible to Dawson in the length of time that we had and the facilities that we had.

Q. Why was that cargo moved?

A. As we considered it safer to remove it to Dawson than leave it aboard the boat?

Q. Did you also have a written contract with Ford for the removal of the cargo from the “Robert Kerr”?

A. I did.

Q. Look at the paper I now hand you and state if that is a correct copy of that contract?

A. It is.

Q. Where is the original?

A. On the files in the Dawson office.

Mr. BOGLE.—I offer this copy of contract in evidence with the same stipulation we had in regard to the other two.

(Paper referred offered in evidence marked as Libellant’s Exhibit “D” and returned and filed herewith.)

(Testimony of Charles E. Bryant.)

Q. What became of that portion of the cargo on the "Robert Kerr" that Ford was not able to move?

A. It arrived at Dawson on the "Kerr" on or about the 24th of May, 1904.

Q. Can you state the weight and character of the cargo that was moved from Washington Creek to Dawson, and also that part of the cargo that was moved by Ford from the "Kerr" to Dawson, and all that part of the cargo that came up later on the "Kerr"?

A. Ford hauled the entire "Lightning" cargo, amounting approximately to 109 tons, which consisted mostly of poultry, pork loins, beef loins, beef ribs, and butter. He also hauled about 50 tons of meats from Circle from the steamer "Robert Kerr," which consisted mostly of beef loins, beef ribs, choice cuts, beef and mutton. When Ford started for Circle for his loads, I informed him to make up his loads as much as possible of the most valuable meats and to fill in with mutton and pork after he had taken all the choice cuts possible. I did this in order to save the meats that represented the most money.

Q. As the meats were delivered by Ford at Dawson were the amounts, weights and kind of product checked up and a record kept of the same?

(Testimony of Charles E. Bryant.)

A. Yes, sir. I did not finish that other question, you interrupted me, Mr. Bogle. Do you want the rest of the answer to that question? I got all but the cargo the "Kerr" brought up to Dawson.

Q. Do the vouchers which you took from Ford give a list of the products which were hauled by him both from Washington Creek and from the Steamer "Kerr"?

A. I think they do.

Q. I notice in the contracts with Ford, copies of which have been introduced in evidence here as Libellant's Exhibits "D" and "E," that you are to pay 12 and a half cents per pound for that portion of the cargo to be hauled from Washington Creek to Dawson and 15 cents per pound for that portion of the cargo that was hauled from "Robert Kerr," and that the company furnished sleds and harness and part of the team to be used by Ford in transporting those products. Did you make any charge for the sleds and harness and team?

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial.

A. We did.

Q. How much?

A. It was agreed with Ford when we drew up those contracts that we should be allowed a half a cent a pound for the meat hauled from Washington Creek and a cent a pound for the meat hauled from

(Testimony of Charles E. Bryant.)

Circle, and on this understanding he gave us a rate of 12½ cents from Washington Creek, allowing us the half a cent, which would make it 13 cents from Washington Creek, and the rate of 15 cents from Circle, allowing us a cent for the use of our equipment, which would make it 16 cents. I consider that both rates of 13 and 16 cents are very reasonable..

Q. Did you make any effort to procure a better rate from any other person?

A. I did. There was no one else in the country who was capable of carrying out the contract, as Ford had feed on the trail, or feed cached at Eagle, and was from the 1st day of November until the 16th day of April with about from 50 to 70 head of horses delivering the goods that he did.

Mr. BRONSON.—I move to strike out all the answer as not responsive to the question, and incompetent, irrelevant and immaterial.

A. (Continued.) —also he was the only man in the country who was in a position to give a bond for the proper protection of the cargo in transit to Dawson.

Q. I now hand you a lot of vouchers, consisting of 43 papers, purporting to be vouchers for moneys paid out by the Pacific Cold Storage Company in connection with the saving of the cargo of the steamer

(Testimony of Charles E. Bryant.)

“Robert Kerr,” and I will ask you if those vouchers represent actual moneys paid out by the company for the various matters expressed in the vouchers themselves.

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial.

A. They do.

Q. Were those payments made under your supervision, as the manager of the company at Dawson?

A. Yes, sir.

Q. Do those vouchers represent correctly the moneys actually paid by the company for the matters therein expressed? A. They do.

Mr. BOGLE.—I want the record to show that I offer these vouchers in evidence and will take them up one at a time and have the witness testify with reference to each voucher if the respondent desires it, but in order to save time I offer them with this general proof that they represent these expenditures by the company. Mr. Bryant, the witness on the stand, is the only witness now within the jurisdiction of the court who is familiar with these vouchers and he would be able to go into them in detail and explain them, if an explanation is needed, and he will be returning to Dawson on or about the 4th of February, but will be subject to any examination

(Testimony of Charles E. Bryant.)

with reference to the vouchers that respondent may indicate is desirable before that time.

(Vouchers referred to, 43 in number, marked as Libellant's Exhibit "E" and "E-1" to "E-42," both inclusive, and returned and filed herewith.)

Q. Mr. Bryant, did you employ any attorney at Dawson to draw the agreement with the owners of the "Lightning," and the agreements with Ford?

A. I did.

Q. Who was the firm?

A. Pattullo & Ridley.

Q. Is that the service that is represented by the vouchers signed by Pattullo & Ridley that have been filed?

A. It is.

Q. In the contract with the owners of the "Lightning" I see it was stipulated that you would pay the sum of \$5,000 for making the trip and a further sum at the rate of \$500 a day for such time as the "Lightning" might devote endeavoring to assist the "Kerr." In view of the fact that the "Lightning" did not succeed in getting through to Dawson with the cargo on board what adjustment or settlement was made with the owners of that steamer for the service rendered by her?

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial.

(Testimony of Charles E. Bryant.)

A. The original bill for the service rendered me amounted to approximately \$6,750; after negotiating with them for about three months, I succeeded in making a settlement of the same for \$4,500, I think it was, in fact, I am almost positive.

Q. I find in this list of vouchers one for \$3,000 and one for \$1,375 on account of the services of the steamer "Lightning"; how was the balance of the \$4,500 paid?

A. It was allowed by the owners of the "Lightning" for cargo damaged while on board the "Lightning." The damage was figured on the invoices, the cost plus the freight and insurance to Washington Creek.

Q. Mr. Bryant, was there a market in Dawson where a cargo of the size of this one could have been disposed of at whole sale or at auction or in bulk.

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial.

A. There is no one outside of the Pacific Cold Storage Company that has the facilities for handling any such cargo.

Q. Basing your estimate upon the prices per pound which prevailed in Dawson during the winter of 1903 and 1904, what would have been the aggregate value of the cargo on board the steamer "Kerr"?

(Testimony of Charles E. Bryant.)

A. It is hard to say without looking up our records on that.

Q. Did you ever make a statement based upon your records, and the market price of the various articles? A. I did.

Q. Have you that statement where you can refresh your recollection?

A. (Producing a paper.) Yes, sir. I should judge that value of the cargo would be about \$90,000 - \$90,000 to \$95,000.

Q. (Mr. BRONSON.) Is this your own refreshing memoranda or it is somebody else's?

A. No, it is a statement made by the bookkeeper under my direction and supervision.

Q. (Mr. BOGLE.) Now, I will ask you again, I think you did not understand the question: Basing your estimate upon the prices per pound which prevailed in Dawson during the winter of 1903 and 1904, what would have been the aggregate value of the cargo on board the steamer "Kerr"?

A. About \$130,000.

Q. Is that estimate based upon the retail selling price at Dawson during that winter and at the opening of navigation?

A. Based on the jobbing price in Dawson; yes, sir.

(Testimony of Charles E. Bryant.)

Q. You say the cargo could not have been sold in any other way, that is, it could not have been sold in bulk? A. No, sir.

Q. Approximately, what would be the cost of selling out the cargo so as to realize the jobbing prices you have mentioned?

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial.

A. About 4 cents per pound.

Q. What would that amount to in the aggregate?

A. Sixteen thousand dollars—\$16,000 to \$20,000.

Q. What proportion of that cargo was sold by the company during the winter of 1903 and 1904, up to the time of the opening of navigation on the Yukon River in the spring of 1904?

A. About \$36,000.

Thereupon a recess was taken until 2 o'clock the same day.

Seattle, Washington, 2 P. M.

Saturday, January 28, 1905.

Present: The same as at morning session.

Continuation proceedings pursuant to adjournment, as follows, to wit:

Mr. CHARLES E. BRYANT, a witness on behalf of libelant, on the stand.

Direct Examination Resumed.

Q. (Mr. BOGLE.) I show you a statement and ask you if this is a statement of the number of pounds shipped and received from the "Kerr" and Washington Creek, made out at the Dawson office under your supervision?

A. It is.

Q. I notice this statement is divided into two classes, "sales to opening of navigation" and "as value of stock on hand on opening of navigation at the prevailing prices." Does that correctly show the part of the "Kerr" stock that was sold during the winter and up to the opening of navigation?

A. It does.

Mr. BRONSON.—The respondent objects to the use of this memorandum unless the witness made it himself, and objects to his testifying from it.

Q. By whom was this statement made out?

A. Made out by the bookkeeper of the company under my direction.

Q. Are you familiar with the prices that prevailed at Dawson at that time? A. I am.

Q. You say the prices given on that statement are the correct prices?

A. They are to the best of my knowledge and belief.

(Testimony of Charles E. Bryant.)

Q. At the time this statement was made, did you compare it with the books sufficiently to ascertain whether it was correct with regard to the quantities?

A. I did.

Q. Was it correct? A. It was.

Mr. BOGGLE.—We offer that statement in evidence.

(Statement referred to offered in evidence, marked as libellant's Exhibit "F" and returned and filed herewith.)

Q. I observe that on this statement there is some paper, hay, oats, salt and bacon. Were those articles a part of the stock that was on the steamer "Robert Kerr" or were they carried on the barge that had been towed by the Kerr?

A. Carried on the barge.

Q. Was that part of the stock that had been shipped on the steamer "Elihu Thompson" from Puget Sound on that voyage? A. It was.

Q. Where was the transfer made from the "Elihu Thompson"—where would it be made in the ordinary course of the voyage?

A. St. Michaels.

Q. You do not know of your own personal knowledge at what point the barge with its cargo was left by the "Kerr," do you?

(Testimony of Charles E. Bryant.)

A. Fort Yukon.

Q. How far is that below Circle City?

A. About eighty or ninety miles.

Q. Then this paper and bacon, hay, oats and salt was not on the steamer "Kerr" at the time this disaster occurred? A. It was not.

Q. And was any part of these goods involved in these expenses that have been covered by these vouchers that have been filed? A. No, sir.

Q. Deducting the valuation of this hay, oats, salt, bacon and paper given on that estimate and what would it leave as the jobbing and selling price of the products that were really carried on the "Robert Kerr" and which were involved in these expenses?

A. One hundred and six thousand two hundred and sixty dollars.

Q. And I understood you to say that it costs about four cents a pound to make the sales to the jobbing houses in the way it is estimated in that list in order to get the prices computed in that list?

A. It does.

Q. About how much, in round figures, did this disaster to the "Kerr" and the expense of forwarding the goods and of taking care of the "Kerr" during the winter and of saving her in the spring on the break-up of the ice in the spring, cost the company?

(Testimony of Charles E. Bryant.)

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial.

A. For sixty-five to seventy-five thousand dollars.

Q. That was actual outlay in money, was it?

A. It was.

Q. (Paper shown witness.) Is that Captain Smith's signature there? A. It is.

Q. And the signatures of these other parties who signed, Atwell and somebody? A. Yes, sir.

Mr. BOGLE.—I offer in evidence that extended notice of protest just identified by the witness.

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial.

(Paper referred to offered in evidence, marked as Libellant's Exhibit "G," returned and filed herewith.)

Cross-examination.

Q. (Mr. BRONSON.) At what time of the year, Mr. Bryant, are the goods of the class to which these belonged, of the greatest value?

A. Well, I don't think there is very much difference in the value of the at any one season of the year. It depends on the demand greatly.

Q. Are they not of a greater value in late winter and early spring than they are immediately after navigation opens up? A. Not always.

(Testimony of Charles E. Bryant.)

Q. Do not transportation companies always bring large stocks of goods as soon the navigation of the river is opened?

A. Usually on the first boats, yes, sir.

Q. Does not that have a tendency to reduce the prices of commodities of this kind?

A. Well, we figure on enough to carry them until the opening of the navigation, until such times as they can get goods on the first boats.

Q. But is not that very frequently the case, that all goods of the character such as these goods involved in this shipment are of greater value along in the late winter and early spring than they are after the first boats arrive?

A. It depends on the market and the amount of goods in the market at that time.

Q. The question is, does not that frequently happen? A. Yes, sir, it does.

Q. You are not a machinist in any way, are you?

A. No, sir.

Q. Or engineer? A. No, sir.

Q. You are not, I suppose, qualified as an expert on machinery? A. No, sir.

Q. I understood from your testimony that between the time when the river begins to break up and when navigation is open the temperature reaches as high as seventy degrees? A. Yes, sir.

(Testimony of Charles E. Bryant.)

Q. And for how long a part of the day would that be true?

A. Well, the closer to the opening of navigation the longer that temperature would prevail. Possibly twelve to fifteen hours a day along in May or the last of April.

Q. That it would remain as high as seventy?

A. Yes, sir.

Q. Does it not freeze every night?

A. It usually freezes at night there after the sun goes down, but the days lengthen materially along in late April and May.

Q. What is the character of the refrigerating plant in Dawson?

A. We have a complete compression system.

Q. You do not use natural ice in any way?

A. No, sir; we use ammonia gas.

Q. Of course during the time that the Yukon River is closed, beginning with the time when it closes in the fall and continuing through the winter, the temperature never goes above the freezing point, does it, until we reach the time in the spring when the river begins to open? A. Yes, sir.

Q. Would the temperature be above the freezing point in the months of November, December, January, February and March? A. Yes, sir.

(Testimony of Charles E. Bryant.)

Q. It would be rather an unusual circumstance, would it not?

A. No, sir. I understand you, by that above the freezing point—you mean the temperature gets milder or colder?

Q. I mean, does the temperature get above the point where things will thaw?

A. No, sir, it does not. I misunderstood your question. I thought you meant if it would get colder there in the winter-time; that is what I thought I was answering.

Q. That is, there would be no thawing weather there after the river closes until spring?

A. It is not a general thing to have a thaw until along in April.

Q. The river of course is full of ice?

A. Yes, sir.

Q. How large a place is Circle City—how many people are there there?

A. Oh, I should judge about two hundred in Circle and the vicinity of Circle, if that many—not over a hundred, I don't suppose.

Q. Labor can be got there, I suppose, in limited quantities, can it not, during the winter?

A. No, sir.

(Testimony of Charles E. Bryant.)

Q. Out of two hundred people could you not find any common labor at all?

A. Most of that two hundred was in the mines some few miles back of Circle, if there are that many. I doubt very much if there are over a hundred people in Circle City.

Q. Well, you would find some common labor there, would you not?

A. It is very doubtful during the winter season, outside of a few Indians you might pick up.

Q. Can you get the Indians to do any work?

A. When they feel disposed to.

Q. I suppose if you pay them they will work, will they not?

A. They would if they have not any money, as a general thing.

Q. Beginning with the lowest point down the river where any of this cargo of the original cargo of the "Kerr" was taken from the "Kerr," will you give me in as close an approximation as you can the place where, and the amount of that cargo that was discharged from the "Kerr"?

A. All the cargo that was removed from the "Kerr" by the "Lightning" was taken to Circle before the boats were loaded ready to proceed to Dawson.

Q. And the "Kerr" wintered where?

(Testimony of Charles E. Bryant.)

A. Circle City.

Q. And the "Lightning," where?

A. Washington Creek.

Q. Which is how far from Circle and which direction?

A. About 110 miles from Circle.

Q. Up the river? A. Up the river.

Q. Have you an approximate idea of the cubical contents of that cargo? A. I have not.

Q. Have you an idea of what space it would be contained in if packed together? There were about two hundred tons, were there not?

A. About two hundred tons; yes, sir.

Q. Is that dead weight or measurement?

A. Dead weight.

Q. There is an allowance of about forty cubic feet to the ton, is there not, ordinarily as an approximation by shipping masters and such people?

A. Not in cold storage products.

Q. What would it amount to?

A. We figure about eighty feet to the ton in cold storage products.

Q. Eighty cubic feet to the ton?

A. Yes, sir.

Q. You testified, that the "Susie" and "Sarah" both had mishaps. You derived your information of that from other people, did you not?

(Testimony of Charles E. Bryant.)

A. I saw the "Sarah," sir. She was sunk by striking a reef or the rocks, what is known as the Nation Reef.

Q. She struck a reef?

A. Yes, sir, on account of the low stage of water.

Q. Was she wrecked?

A. She was afterward relieved by the assistance of other of the N. P. Company's boats.

Q. It is a very common occurrence, is it not, for vessels plying on the Yukon to go aground?

A. I don't know that it is for any length of time.

Q. Do you imagine that there is any boat plying on that river that does not get aground at least one or more times during the season?

A. Yes, there are seasons that they do not touch at all, but they will very often touch a bar and get right off of it inside of half an hour or probably two or three hours.

Q. Touching the ground or stranding on those bars, however, is not considered of the serious or dangerous character that is ordinarily attributable to the stranding of a vessel at sea, is it?

A. It is, in some cases, yes, sir. It depends on the position of the boat.

Q. Is it generally?

A. It depends on the condition of the river at the place the boat strands.

(Testimony of Charles E. Bryant.)

Q. Did you ever know a vessel to be completely wrecked and destroyed by stranding on the river?

A. I don't know as I have, on account of the shallowness of the water they can't very well be completely wrecked unless they are caught in the ice and cut down by the ice.

Q. You expect ice to come into the Yukon River about when?

A. From the 15th of October to the 25th.

Q. Does it not ordinarily begin to run more or less by the 1st of October?

A. Very seldom to my knowledge.

Q. You think there would not be any ice at all in the river? A. Very little, if any.

Q. Boats expect to buck the ice at first, do they not? A. No, sir.

Q. Don't they expect to meet any ice at all?

A. Every effort is made to get the boats into winter quarters before any ice begins to run.

Q. Well, would you say from your experience in that country that it is the ordinary practice and the usual thing for boats not to meet ice in the fall of the year?

A. Every effort is made to get the boats in winter quarters before there is any ice running in the river.

Q. Yes, I know, but I say would you be willing to

(Testimony of Charles E. Bryant.)

say that it is the usual thing for boats not to meet any ice in the fall?

A. Yes, they figure on having them in quarters before there is any ice appearing in the river—running ice.

Q. Of course they do not always carry out what they figure on then, do they?

A. (No answer.)

Redirect Examination.

Q. (Mr. BOGLE.) Mr. Bryant, would the steamer "Robert Kerr" in your judgment have been able to reach Dawson during the season of 1903 if she had not stranded upon the trip up?

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial, and it is not shown that the witness is qualified to give an opinion.

A. I believe she would.

Q. You were asked what season of the year afforded the best market for refrigerated products in the Dawson country. Is there any company that handles refrigerated products except the Pacific Cold Storage Company?

A. No, sir, outside of a few small shipments which were made by way of Whitehorse, which would not amount to over ten or fifteen tons in a year.

(Testimony of Charles E. Bryant.)

Q. The market at Dawson, particularly in the line of meats and poultry, fluctuates almost with every shipment in there, does it not? A. It does.

Q. Do you ever have an over supply during the winter season when navigation is closed?

A. Yes, sir.

Q. What is the effect upon the market?

A. It has a tendency to lower the prices of meat.

Q. Does the market at times in the winter time reach a lower point than the average summer market during the summer season?

A. It did in the winter of 1903 and 1904.

Q. Referring to the freezing of the Yukon River during the winter time; to what extent does the river freeze—does it freeze solid to the bottom?

A. No, sir; to five or six feet of ice, then it piles up in places where it is thirty or forty feet high which is caused by jams.

Q. You were asked whether there was any time during the winter season when the temperature would get above the freezing point. At what time in the spring does the temperature get warm enough to affect refrigerated products that are exposed to the temperature?

A. We look for it any time after the 1st of April—last of March or 1st of April.

(Testimony of Charles E. Bryant.)

Recross-examination.

Q. (Mr. BRONSON.) You say that prices fluctuated with every shipment?

A. Yes, sir, as a general thing they do.

Q. Why is that?

A. On account of the supply.

Q. It is governed, in other words, by the law of supply and demand? A. Yes, sir.

Q. Does not the same rule apply and hold true with the shipments in the spring? A. Yes, sir.

Q. Are there not a great many shipments coming in with the first opening of navigation?

A. Not always.

Q. Do not the transportation and trading companies up there make a great point of seeing which one can get the first supplies into Dawson?

A. They do if there is any shortage in a particular line, but those shortages are growing less every year.

Q. Cold storage products such as are involved in this case are of course used for the same purposes that the same articles are used for when they are not cold storage, are they not?

A. It is impossible to get a shipment of cold storage products in there in the spring until about the 1st of July.

Q. Well, do cold storage products occupy any different position than the same products which have

(Testimony of Charles E. Bryant.)

not been put through the cold storage process as far as markets are concerned? Are frozen meats of any more value or do they occupy a different position than unfrozen meats in good condition?

A. I don't know as they do.

Q. (Mr. BOGGLE.) The large companies in Dawson do not handle or deal in products of this kind, do they, Mr. Bryant? A. No, sir.

(Testimony of witness closed.)

And thereupon, adjournment was taken to some date to be hereafter agreed upon by proctors for the respective parties.

February 8th, 1905.

Continuation of proceedings pursuant to adjournment. All parties present at former hearing.

Captain W. J. DOBLER, produced as a witness in behalf of libelant, being first duly cautioned and sworn, testified as follows:

Q. (Mr. BOGGLE.) Where do you reside?

A. I reside at Roy, Washington.

Q. What is your business?

A. Master and pilot of steam vessels.

Q. Have you had any experience on the Yukon River between St. Michael and Dawson?

A. Yes.

(Testimony of Captain W. J. Dobler.)

Q. How many seasons? A. Seven.

Q. Were you employed on that river during the season of 1903? A. Yes, sir.

Q. What steamer were you on at that time?

A. I was on the "T. C. Power" and "John Cudihée."

Q. Were you acting as master or pilot during that season? A. Pilot.

Q. Do you know the steamer "Robert Kerr"?

A. Yes, sir.

Q. Did you see her on the trip up the river in the Fall of 1903? A. Yes, sir.

Q. Are you acquainted with the conditions on the Yukon River during the break-up of the ice in the spring?

A. I have been there two seasons during the break-up.

Q. Do you know the point at which the "Kerr" wintered during the winter of 1903-04?

A. Yes, sir.

Q. What was her condition with reference to safety, on the break-up of the ice in the following spring?

(Respondent objects as irrelevant, immaterial and incompetent.)

A. In regard to the safety from the experience of

(Testimony of Captain W. J. Dobler.)

other vessels, I would say that she was not in a very safe place.

Q. Do you know the point called Two-Pipe Bar?

A. Yes.

Q. How far is that below Circle?

A. Between forty-five and fifty miles.

Q. Assuming that the Kerr, loaded, proceeding up the river, got stranded on that bar on the 22d day of September, 1903, and succeeded in getting off on 28th of September, 1903, was there any point that she could reach along the Yukon River where she could have been in any greater safety than the place where she did arrive?

Mr. BRONSON.—Respondent objects as irrelevant, immaterial, incompetent, and it is not shown that the witness is familiar with the circumstances and conditions sufficient to testify, or to justify his giving evidence.

A. None that I knew of.

Q. Have you, during the time you have been on the Yukon River, ever seen the break-up at Circle City, or just immediately above Circle City in the spring?

A. No, sir.

Q. Have you ever passed along soon enough after the break-up to see evidences of it, so that you could determine which way the ice went down the river?

(Testimony of Captain W. J. Dobler.)

A. Yes, sir.

Q. During what year?

A. During the year 1898 and (referring to document) 1903 I was there. Soon after the break-up.

Q. Is this slough where the "Kerr" was moored during that winter, open at the upper end or is it an enclosed, blind slough?

A. It is open in high water.

Q. During the years that you were familiar with the break-up of the ice at that point, did the ice come down through the slough or around the river?

(Respondent objects as irrelevant, immaterial and incompetent.)

A. Through the slough.

Q. If a steamer of the size of the "Kerr" had been moored in that slough in either of those seasons, what would have been her fate in the breaking-up of the ice in the spring?

Mr. BRONSON.—I object to that as irrelevant, immaterial and incompetent, and the witness is not shown to be qualified to answer, and it calls for simply a conclusion and not for a fact.

A. My judgment is that she would have been in danger.

Q. (Mr. BOGLE.) With the knowledge and information you have acquired of conditions about Cir-

(Testimony of Captain W. J. Dobler.)

cle City on the break-up of the ice during the seasons that you have been familiar with it, if you had been the owner of the cargo on the steamer "Robert Kerr" during the winter of 1903-04 and that cargo had been of the value of, say, sixty-five thousand dollars, as the first cost, and had been refrigerated cargo, perishable, and it would have cost you from forty to fifty thousand dollars to transport it, during the winter time, through to Dawson, what would you, as the owner, have done; would you have incurred the expense of forwarding it to Dawson, or have taken the chances of its being saved or lost on your steamer?

Mr. BRONSON.—I object to that as irrelevant, immaterial and incompetent, and calling for a conclusion of the witness, and the question is based upon facts not shown by the evidence to exist.

A. I should have removed the cargo under all circumstances, from the boat, at any cost; for the reason that in other seasons boats had got shoved off on the back, and a boat with a loaded cargo shoved off on the back by the ice would have gone to pieces.

Q. Do you know what is the custom of steamship companies along the Yukon River with reference to removing or leaving the cargo on board on steamers that are caught in the ice in the winter?

(Respondent objects as irrelevant, immaterial and incompetent.)

(Testimony of Captain W. J. Dobler.)

A. Yes, sir.

Q. What is the custom?

A. The custom is to remove the cargo.

Q. Is that universal?

A. Yes, as far as I know.

Cross-examination.

Q. (Mr. BRONSON.) Where do you ordinarily remove the cargo?

A. They move it to a place of safety above high water.

Q. Move it up on the banks?

A. Or at any place that it is safe.

Q. It is safe as soon as you get it above the reach of the water?

A. Ordinarily a cargo is, a cargo that is not perishable.

Q. There is plenty of ice there, is there not?

A. There is, in the winter.

Q. It would not be a matter of any great expense, would it, to build an ice-house, or to make an ice-house which would last through the ordinary Yukon winter?

A. So far as lasting through the winter it would be all right, but I do not know about it lasting through the spring.

(Testimony of Captain W. J. Dobler.)

Q. It would not last through the summer; it would last until the boats were going on the river all right?

A. I do not know whether it would be all right for perishable goods; it would be quite an undertaking to build a—to put up a cold storage plant.

Q. It would not be any great undertaking on that river, with the ice that is there, to make a cache of ice, would it?

Q. You would have to have a pretty good house.

Q. Would not any ordinary structure do?

A. I do not think so.

Q. Why not?

A. Well, because it would melt.

Q. It would not melt in the winter, would it?

A. No, sir.

Q. It would not melt until about what time in the spring—when would the ice begin to thaw at all in the spring?

A. Well, the snow is usually gone before the ice goes out.

Q. I am talking about the ice now. When would the ice begin to thaw?

Q. If the ice was lying out on the bank it would thaw before the ice goes out in the spring—the snow does.

(Testimony of Captain W. J. Dobler.)

Q. Suppose it was covered over with boarding of any kind; would it be difficult to make a small ice-house?

A. Well, it would depend on whether you had the material there.

Q. It would not be materially harder to do it there than here, if you had the labor, would it?

A. I do not know as it would.

Q. You say you have known cargoes to be taken from steamers?

A. Yes, sir.

Q. That they thought were liable to be injured in the brake-up?

A. Yes, sir.

Q. That was partly to save the vessel too, was it not?

A. Yes, so that the vessel would not be too heavy when the ice broke up.

Q. And the cargo, in those cases, was taken ashore?

A. Yes, sir.

Q. A short distance away?

A. Yes, sir.

Q. And reloaded when the ice was gone out, and the river was navigable?

A. Yes.

Redirect Examination.

Q. (Mr. BOGLE.) Did you see the "Lightning" in the spring of 1904 at the break-up?

A. I was down there, but I didn't see the boat; I was off watch at the time—I know where she was but I did not see her.

(Testimony of Captain W. J. Dobler.)

Q. You were asked about an ice-house. What is the length of warm season from the time the warm weather comes in the spring until the ice goes out of the river?

A. Well, the snow always goes off before the ice goes out down the river.

Q. How long a period usually elapsed between the time when the thermometer gets up to thirty above zero, until the ice goes out?

A. I should judge about two months, as near as I can tell.

Q. Are there any houses at this place where the "Kerr" was moored which would have been available for making an ice-house?

A. I do not know of any that would have been.

Q. Do you know whether refrigerated meats, poultry and fish, could be carried in an ice house for two months without spoiling; meats of that kind which had been frozen prior to that time?

Mr. BRONSON.—I object, unless the witness is qualified as an expert and knows those matters as an expert.

Mr. BOGLE.—That is what I am asking, as to whether he knows.

A. I do not know that I can testify as an expert; I have seen those meats in that country.

(Testimony of Captain W. J. Dobler.)

Q. You do not know whether it is practicable to take meats out of refrigeration where they are frozen and carry them for a couple of months in an ice-house or not, do you? A. No, sir, I do not.

Recross-examination.

Q. (Mr. BRONSON.) When does the river ordinarily open to navigation?

A. Around there it opens from the 16th to 25th of May.

Q. You do not mean to testify, do you, that the temperature at Circle City for instance, goes above freezing point for any considerable part of a day, two months before that time, do you, the 16th of March?

A. Well, they have a pretty long day there. I never put in and wintered at Circle City.

Q. You do not know then?

A. I never wintered at Circle; I wintered farther up the river.

Q. Did you ever know the thermometer to stand above the freezing point in any part of the Yukon country where you had lived in the night-time, previous to the first of June? A. Not all night.

Q. You say it don't thaw at night?

A. I said that I did not know that it was above freezing point all night.

(Testimony of Captain W. J. Dobler.)

Q. What?

A. I say I do not know that it was above freezing point all night.

Q. Well, is it above the freezing point at any time of the night? A. Well, it is in the day time.

Q. Since we have a long day there—in your opinion, is the thermometer above the freezing point more than three or four hours of the day; up until say the first of May? A. Yes.

Q. It is?

A. Yes, where I have been.

Q. What part of the Yukon River is that?

A. The George River.

Q. You never spent a winter at Circle City?

A. No, sir.

Q. The ice that comes out of the Yukon River at Circle City is driven out by the force of the water coming from above? A. High water.

Q. And it is not melted to any considerable degree before it goes out at such point, is it?

A. Well, there is places that it is—you hear of men going through the ice in the spring before it breaks up.

Q. How far down does the thaw go into the ground at any time during the summer?

A. Well, there is different places. Now, if you want me to cite an instance.

(Testimony of Captain W. J. Dobler.)

Q. I want to know the general conditions; what is the average thaw?

A. I could not say for certain.

Q. Is it more than a foot?

A. It is, in places, and in other places it might not be so much.

Q. In the average, is it more than a foot?

A. Well, I would not say for certain that it was.

Q. Well, it would be somewhere in that neighborhood, wouldn't it? A. Somewhere.

Q. That is as deep as it would thaw at any time in the summer in that country?

A. Well, it depends—if the moss is taken off. If the moss is left on it doesn't, but if you take the moss off the ground it thaws deeper.

Q. The moss preserves and protects the ice, or protects the frost beneath against the sun?

A. Yes.

Q. This moss is an absolute non-conductor and acts the same as sawdust in an ice-house?

A. The moss is damp there in the timber and does not get much sun, but if you take it out where the sun can strike it it thaws right down.

(Testimony of witness closed.)

WILLIAM JONES, produced as a witness in behalf of libellant, being first duly cautioned and sworn, testified as follows:

Q. (Mr. BOGLE.) Where do you live, Mr. Jones? A. Tacoma.

Q. What is your business?

A. Boiler-maker.

Q. Do you know the steamer "Robert Kerr"?

A. I do.

Q. Were you ever employed to work on her during the season of 1903?

A. In the neighborhood of about twenty hours or twenty-two.

Q. Where was that at? A. St. Michaels.

Q. Was that on her last voyage?

A. Yes, the last trip in the fall.

Q. What kind of work were you doing there?

A. Repairing tubes.

Q. In her boilers? A. Yes, sir.

Q. What was the condition of her boilers when you got through with the work?

Mr. BRONSON.—I object to that as irrelevant, immaterial and incompetent, and not shown that the witness was in a condition to know the condition of the boilers.

Q. (Mr. BOGLE.) How long have you been engaged in boiler work?

(Testimony of William Jones.)

A. About twenty-eight years.

Q. Were you employed to overhaul her boilers at that time? A. I was.

Q. Did you have charge of the work?

A. I did.

Q. Did you overhaul them? A. I did.

Q. What condition did you put them in?

A. The parts that I worked on was first class.

Q. What was the general condition of the boilers?

Mr. BRONSON.—I object to that, unless the witness testifies that he knows what the condition of all the boilers was.

A. The boilers was tested with cold water pressure and they stood the pressure after the job was done, and it was all right.

Q. (Mr. BOGGLE.) Was that he usual test applied to boilers?

A. Yes, sir; the test is generally twenty-five per cent more than the steam.

Q. Is that the only time that you have ever been employed to work on the "Kerr" boilers?

A. Yes, sir.

Q. What were you doing at St. Michael at that time, Mr. Jones?

A. I was employed as foreman bolire maker for the N. P. Co.

(Testimony of William Jones.)

Cross-examination.

Q. (Mr. BRONSON.) What part was it you worked on? A. The tube.

Q. Which boiler?

A. The middle boiler in particular.

Q. And you worked there how long?

A. Twenty hours, in the neighborhood of twenty hours—I worked Saturday night and Sunday. We tested her late on Sunday afternoon.

Q. Did you make the test yourself?

A. I was there; yes, sir.

Q. Did you make the test?

A. The engineer made the test and I was with him, though.

Q. Which boiler was it he put the test on, the one you worked on? A. He tested three of them.

Q. Did you see her connected up on all three?

A. Yes.

Q. Did you see the pressures that were put on yourself?

A. I did, but I forget now just what it was; it was over one hundred pounds anyway.

Q. You say there was no leaks at all?

A. No, sir, not on tubes there was not.

Q. Well, where was there a leak?

A. I do not know of any.

(Testimony of William Jones.)

Q. Do you know whether or not there might not have been leaks and you not have seen them?

A. If there was any very bad leaks she would not have held the test.

Q. How long was the test on?

A. I should judge about ten or fifteen minutes; time enough to examine the ends of the boilers.

Q. Did you make an examination all over the boilers?

A. No, just the work that I done on the boilers.

Redirect Examination.

Q. (Mr. BOGLE.) Did you do all the boilers seemed to need, so far as you could ascertain?

A. Yes.

Q. (Mr. BRONSON.) What means did you have of arriving at what they needed in the first instance?

A. Experience, from working at the business.

Q. You determine that from the appearance of the boiler? A. Yes.

Q. What directions were you given relative to repairing; was it some particular place that wanted repairing?

A. Just simply to go ahead and roll the tubes and calk them up again.

(Testimony of William Jones.)

Q. Is that considered a proper, permanent way of repairing tubes? A. Yes.

Q. That is all that is done to them?

A. Yes.

Q. What was the condition of the tubes themselves? A. Of the tubes?

Q. Yes, were they first-class tubes at that time?

A. There was good material in them; they would stand expanding and reworking over.

Q. Had they been reworked before?

A. Not that I know of.

Q. Could you tell from examining them?

A. No.

Q. How long do tubes ordinarily last on the Yukon River?

A. If they last two seasons they will do well up there.

Q. That is the life of the tube, is it not?

A. Yes.

Q. The extreme life—how long was this before she sailed up the river? A. Three or four days.

Q. Who gave you the directions relative to repairing them?

A. I got permission from the superintendent of the N. P. Co.—

Q. Who directed you in behalf of the “Kerr”?

A. The chief engineer.

(Testimony of William Jones.)

Q. What did he say to do?

A. He asked me to go over there and to help him out, to roll some tubes.

Q. What?

A. He asked me to come over there and help him to roll some tubes—he was crippled at the time.

Q. You mean he was personally crippled?

A. Yes; his hands was burned or something.

Q. How many tubes did you say you repaired?

A. In the neighborhood of about ninety.

Q. This was mainly in the middle boiler?

A. This was mainly in the middle boiler.

(Testimony of witness closed.)

W. H. BLEDSOE, produced as a witness in behalf of libellant, being first duly cautioned and sworn, testified as follows:

Q. (Mr. BOGLE.) Where do you reside, Captain? A. 2311 Queen Anne Avenue.

Q. What is your business?

A. Master and pilot.

Q. Have you had any experience on the Yukon River between Dawson and St. Michael?

A. Yes.

Q. Between what seasons?

A. The season '98 up to last fall, seven seasons.

(Testimony of W. H. Bledsoe.)

Q. With what transportation companies have you been employed?

A. Alaska Commercial Company, and then it changed hands and formed the Northern Navigation Company, and then the Northern Commercial Company—practically all the same company with the exception of changing the names.

Q. What steamers were you on during the season of 1903? A. On the steamer "Susie."

Q. That was one of the largest steamers that the Northern Commercial Company was operating?

A. Yes, sir.

Q. Did you make a trip up the Yukon River from St. Michael to Dawson during the fall of 1903?

A. Yes, sir.

Q. What time did you leave St. Michael?

A. The steamer left St. Michael on the 13th of September I think, but I was captain of the steamer "Herman" at the time she left, and she met me up above Andik, and I got off the "Herman," and went on the "Susie" to take the steamer to Dawson.

Q. How far is Andrik above the mouth of the river?

A. About three hundred and fifty miles.

Q. Did you get through to Dawson?

A. Yes.

Q. What time?

(Testimony of W. H. Bledsoe.)

A. We arrived in Dawson on the 21st of October.

Q. How much cargo did the "Susie" take out of St. Michael?

A. The "Susie" took out of St. Michael about five hundred ton.

Q. What was she carrying, a tow?

A. No, when she left St. Michael she picked up a tow at the coal mine and carried it on as far as Rampart.

Q. She carried the five hundred tons on board?

A. Yes, on the "Susie."

Q. How much of it did she get through to Dawson?

A. She got through to Dawson with about fifteen or sixteen tons.

Q. What was the trouble that she did not carry the entire cargo?

A. Low water; the water too low to carry the steamer to Dawson with the cargo on board.

Q. How was the season, the fall of 1903, as to low water; was it earlier or later than usual?

A. It was earlier than usual. It was extremely low, that is on the Yukon River flats.

Q. Did you see the "Robert Kerr" on the trip?

A. Yes.

Q. Where was she?

(Testimony of W. H. Bledsoe.)

A. The first time I saw her was sixteen miles from Circle City, and then the second time, the farthest up the river I saw her at all was twelve miles below Circle.

Q. Did you have any difficulty making your way up under your own steam any part of the Yukon River below Circle City, so far as the rapids are concerned?

A. We had difficulty, yes, from the time we left Fort Yukon until we got to Dawson.

Q. Was there places where you had to resort to other means other than your own steam?

(Respondent objects as irrelevant, immaterial and incompetent.)

A. We had to throw freight off eight miles above Fort Yukon; we had to throw off fifty ton of freight to start with, in order to get over the Eight Mile Bar.

Q. Do you know the place where the "Robert Kerr" wintered in 1903-05?

A. Yes, I know of the place.

Q. Have you ever been on the Yukon River during the trip up in the spring?

A. Yes, sir, I have been at Andraefski and Cliff Creek.

Q. Do you know the slough where the "Kerr" was moored just above Circle City?

A. Yes.

(Testimony of W. H. Bledsoe.)

Q. How is the head of that slough, as to whether it is a blind slough or open?

A. It is blind when the water is low but when the water is high in the spring it is an open slough; the water runs through there.

Q. At the time of the formation of the jams along the Yukon River in the break-up in the spring to what extent does the ice back up behind those jams?

(Respondent objects as irrelevant, immaterial and incompetent.)

A. It backs up different; the most I ever saw it back up was about a mile and a half.

Q. How high does the ice pile up in those jams about the water?

(Same objection.)

A. I saw piles as high as twenty feet.

Q. Do you know whether those jams usually form at any other point above Circle City during the break-up in the spring?

(Same objection.)

A. No, I do not know of any point just above Circle where it jams—not just above Circle.

Q. Do you know how the ice had gone out during the three or four seasons prior to the season of 1904 in reference to the slough where the "Kerr" was moored, whether the ice had gone through the slough or around the river?

(Testimony of W. H. Bledsoe.)

(Respondent objects as irrelevant, immaterial and incompetent.)

A. No, sir, the only time that I ever took any notice of it was the time in '98 when the steamer "Bella" was thrown up on the same slough on the bank; otherwise I did not take any notice of it.

Q. How was she thrown up?

(Same objection.)

A. By wintering in the same slough where the "Kerr" wintered and when the ice broke it jammed and threw her up on the island.

(Respondent interposes the same objection as irrelevant, immaterial and incompetent.)

Q. What would have been her condition if she had a cargo on board?

Mr. BRONSON.—I object to that as irrelevant, immaterial and incompetent and calling for a conclusion of the witness.

A. Well, she would have broke in two, if the "Bella" had a cargo in at that time.

Q. (Mr. BOGGLE.) Do you know what was the custom along the Yukon River as to the removal of cargo, or leaving it on board when the steamer is caught in the ice along the river?

(Respondent objects as irrelevant, immaterial and incompetent.)

(Testimony of W. H. Bledsoe.)

A. As far as my knowledge is concerned, the cargoes are always removed from the steamer in case she is froze in in the ice, or in winter quarters in that river at all it is always removed.

Q. Captain, if you had owned the cargo on the steamer "Robert Kerr" of the value at original first cost, of say, sixty-five thousand dollars, exclusive of freight, knowing the river as you do and the conditions that had previously prevailed at that point at the break-up in the spring, if the cargo had been perishable, and it would have cost from forty to fifty thousand dollars to move it in to Dawson, would you, as the owner, incurred that expense, and moved the cargo, or would you have taken chances by leaving it on board the steamer?

Mr. BRONSON.—I object to that as irrelevant, immaterial and incompetent, and calling for a conclusion from the witness, not based on state of facts shown to exist.

A. I would have taken all the cargo off the steamer.

Q. (Mr. BOGLE.) Have you ever had any experience with refrigerated cargo?

A. No, sir.

Q. How long do they usually have warm weather along the river before the ice goes out, so as to open

(Testimony of W. H. Bledsoe.)

the river to navigation—when I say warm weather, I mean above freezing point.

A. I think from about the 25th of April it generally gets pretty warm, about the 25th of April.

Q. And when does the river generally open to navigation? A. At Dawson?

Q. Well, say at Circle City?

A. Well, at Circle City it opens up along about ten days later than it does at Dawson; that is along about from the 15th to the 20th or 25th of May.

Q. You mean that is time at Dawson, or at Circle City?

A. From the 15th to the 25th in Circle City.

Q. Do you know where the “Lightening” wintered that winter?

A. Yes, I know of the place.

Q. Did you see her the next spring?

A. I did.

Q. What was her condition?

A. Her condition was very bad; she was up on the bank. From all the appearances of the river when I went by her she was broken—she appeared to be that way—I should judge from the appearance of her from the river.

(Respondent objects and moves to strike out the answer as irrelevant, immaterial and incompetent.)

(Testimony of W. H. Bledsoe.)

Q. What would have been the effect if she had had from ninety to one hundred tons of cargo on board?

(Respondent interposes same objection.)

A. If she had the cargo on board they would certainly never have saved her at all; she would break in two, if she was not broken then.

Cross-examination.

Q. (Mr. BRONSON.) You say you would have removed the cargo from the boat? A. Yes, sir.

Q. You mean by that you would have taken it ashore? A. I would have taken it ashore.

Q. You do not mean to testify, do you, Captain, that it gets along about the 25th of April to a point where it is what you would call continuous thawing, in Circle City, do you?

A. Well, it is more of a continuous thaw than not.

Q. Well, it is thawing and freezing?

A. It is thawing and not freezing to any extent at all, maybe a little water in the sloughs would freeze, but it is not forming ice in the Yukon River to any great extent.

Q. It would not be thawing any considerable quantity of ice; it would not thaw out between that time and the time the river opens?

(Testimony of W. H. Bledsoe.)

A. I have seen ice three feet thick at Dawson in the slough thaw out while the river is froze up at Dawson.

Q. Where it is exposed to the sun in the daytime and unprotected? A. Yes.

Q. In an ordinary ice-house though, with just ordinary protection, it would not do much thawing during that time, would it?

A. Do you mean the ice inside of an ice-house?

Q. Yes.

A. Well, it would thaw, of course it not thaw as much as it would out in the open air in the sun.

Q. It would not thaw to any great extent in that length of time, would it?

A. Not to any great extent but it would be thawing all the time.

Q. That is, thawing outside where it was exposed, where the sun struck it?

A. Yes, and it would thaw inside too; because I know that, because I have seen the hulls of steamers that the ice formed in there by water being in there in the winter time, and the ice thaws in there where it is not exposed to the sun.

Q. Where there is no means taken to protect the ice?

A. No, sir, no means taken to protect it.

(Testimony of W. H. Bledsoe.)

Q. Now, it is general custom to the boats to freeze in on the Yukon River? A. Not if they—

Q. They either freeze in the river or in the sloughs; they all freeze in?

A. Yes, as a general rule, they all freeze in.

Q. No serious damage ordinarily results from it, does it—the boats are not destroyed ordinarily by freezing either in the river or sloughs or anywhere else?

A. Not ordinarily, not if they are in the sloughs. In the river they would be—I have known two or three cases where boats have been badly damaged by being out in the river in the break-up.

Redirect Examination.

Q. (Mr. BOGLE.) Is it usual to moor steamers on the Yukon River over winter in an open slough?

A. No, sir, it is not.

(Respondent objects as irrelevant, immaterial and incompetent.)

Q. You were asked about the ice melting if it is put in an ice-house on the Yukon River. Does the weather get warm enough before the opening of navigation on the river to effect or thaw out frozen meats, if they were stowed in an ice-house?

A. Well, I do not think they would be if they were in an ice-house—there are no ice-houses there.

(Testimony of W. H. Bledsoe.)

Q. Is there any way of building ice-houses?

A. Well, if they had the material there there would be means of it.

Q. You mean when the boat is caught in there; when the "Robert Kerr" is in there, could you get material in there to build an ice-house to hold one hundred and fifty or two hundred tons of meats?

A. The only thing you might get would be the logs.

Q. Do you know whether you could carry meats in a frozen condition in an ice-house or not; have you had any experience?

Q. Do you know whether you could carry meats in a frozen condition in an ice-house or not; have you had any experience?

A. I do not know; I never had any experience in that.

Q. Is it not a fact, Captain, that you might keep the temperature in your ice-house to a point where the ice itself would not be melting and at the same time the meat would be above the freezing point?

Mr. BRONSON.—I object to that as the witness is not qualified and has expressly said he did not know.

A. I do not know whether it would be possible to do that or not.

(Testimony of witness closed.)

F. O. BARKER, produced a witness on behalf of libelant, being first duly cautioned and sworn, testified as follows:

(Mr. BOGLE.) Where do you reside?

A. 2111 North 3d Street.

Q. What is your business?

A. Master and pilot of steam vessels.

Q. Have you had any experience in the Yukon River between Dawson and St. Michael?

A. Six years.

Q. What company?

A. The Pacific Cold Storage and the N. C. later.

Q. During what years were you with the Pacific Cold Storage Company? A. 1903.

Q. On what steamer were you engaged at that time? A. "Robert Kerr."

Q. Did you make the full voyage in 1903?

A. I did not; no, sir.

Q. How many voyages did you make on the steamer "Robert Kerr"?

A. One-half the trip from St. Michael to Dawson.

Q. During what months was the trip?

A. July and part of August.

Q. 1903? A. Yes, sir.

Q. And in what capacity? A. Pilot.

Q. What was the condition of the boilers on the steamer "Robert Kerr" during that trip?

(Testimony of F. O. Barker.)

A. I do not know; she was in excellent steaming condition all the time—

Mr. BRONSON.—I object to the question on the ground that the Captain is not shown to be qualified to express an opinion on that subject.

A. (Continuing.) —all the time I was aboard her on the trip.

Q. (Mr. BOGLE.) Did she experience any difficulty in making headway against the current of the Yukon River at any point?

A. Never, not on account of steam.

Q. How is the “Kerr,” as compared with other steamers on the Yukon River, with reference to power, of the machinery to propel her against the current of the river?

(Respondent objects as irrelevant, immaterial and incompetent.)

A. Her power was of the best.

Q. Do you know where the “Kerr” wintered during the winter of 1903-04? A. Yes, sir.

Q. Did you see her at any time on that last trip she made?

A. Yes, I saw her at Twelve Mile Bar, twelve miles above Circle City.

Q. What steamer were you on?

A. The N. C. Company’s steamer “Rock Island.”

(Testimony of F. O. Barker.)

Q. Were you on the "Rock Island" at the time she was endeavoring to get the "Kerr" off the bar?

A. Yes, sir.

Q. How long did you pull on her there?

A. We must have worked about eight hours on the 25th of September, from along in the afternoon, I should judge, or the evening watch, and then we pulled again on her the next day, I do not know how long.

Q. You were not able to get her off the bar?

A. We were not able to move her or do anything with her.

Q. Do you know the date?

A. September 25th I found her on the bar coming up the river, and we met the lifeboat and three men in it saying that she stuck—I think it was that day; I am not sure.

Q. Did the "Rock Island" have any cargo on that trip?

A. Yes, she had about one hundred and twenty-five tons.

Q. Did she get through to Dawson?

A. Yes, sir.

Q. On what day did she reach Dawson?

A. The 21st day of October.

Q. How much of the cargo did she get through?

A. One hundred tons.

(Testimony of F. O. Barker.)

Q. Did you have any difficulty in getting along?

A. Lots of difficulty; difficulty all the time from the time we left—

(Here the solicitor for respondent interposes an objection as irrelevant immaterial and incompetent.)

A. (Continuing.) We had difficulty from the time we left Fort Yukon until we left barge at Fort Yukon.

Q. (Mr. BOGLE.) What was the cause of the difficulty? A. Low water.

Q. Did you meet any ice before you got into Dawson? A. Lots of it.

Q. Did you have any difficulty in getting through it?

A. Yes, sir, we laid up eighteen miles below Dawson three or four days, intending to go into winter quarters.

Q. Do you know where the "Lightning" wintered?

A. Yes, at Washington Creek.

Q. Did you see her the next spring?

A. Yes, sir.

Q. What was her condition?

A. She was shoved up on the bank about twenty feet high, and she was badly humped up in the middle, hogged.

(Testimony of F. O. Barker.)

Q. If she had had any cargo on board, from ninety to one hundred tons of cargo on board at the time she was shoved up in that that position, what would have been the effect on her?

Mr. BRONSON.—I object as irrelevant, immaterial and incompetent and calling for a conclusion of the witness.

A. I should imagine it would break her in two.

Q. (Mr. BOGLE.) How is the slough where the "Kerr" was moored—it is an open slough or what is called a blind slough?

A. It is a blind slough, but at high water it is open.

Q. Do you know how the ice has passed that point in previous years to 1904?

A. I never have been there at that time.

Q. Do you know what is the custom that prevails on the Yukon River as to leaving cargoes on board steamers that are caught in the river without reaching their destinations?

(Respondent objects as irrelevant, immaterial and incompetent.)

A. Usually cargoes and all ship's stores of any weight, are removed ashore and cached.

Q. What is that done for?

A. To relieve the weight on the vessel.

(Testimony of F. O. Barker.)

Cross-examination.

Q. (Mr. BRONSON.) Do you say that you saw the "Lightning"?

A. Yes, I saw her in the spring.

Q. She got off all right?

A. She was lowered sometime in August.

Q. She got off, without breaking herself up any?

A. Yes.

Q. Did you examine the boilers of the "Kerr" going down to St. Michael?

A. No, sir, that is not my department.

Q. She seemed to be steaming down in fine shape?

A. She always had good steam when I was aboard of her.

Q. Did she use as much steam going down as coming up the river?

A. I never went downstream in the "Robert Kerr."

Q. Didn't you say you made a half a trip from Dawson to St. Michaels?

A. From St. Michael to Dawson.

Q. That was the preceding trip? A. Yes.

Q. When was the trip up made?

A. July and August, I do not remember the date.

Q. You left St. Michael on the preceding trip, what time in July?

(Testimony of F. O. Barker.)

A. I do not know; sometime in the fore part of July; we were twenty-four days making the trip from St. Michael to Dawson.

Q. You say you got into Dawson about the 10th of August?

A. Before that, about the 1st or 2d of August.

Mr. BRONSON.—I move at this time to strike out all the evidence of the witness relative to how the vessel steamed on the upward trip, as being irrelevant, immaterial and incompetent.

(Testimony of witness closed.)

W. H. BERGMAN, produced as a witness in behalf of libelant, being first duly cautioned and sworn, testified as follows:

Q. (Mr. BOGLE.) Where do you live?

A. Seattle.

Q. What is your business?

A. Master and pilot.

Q. Have you had any experience on the lower Yukon River, between St. Michael and Dawson?

A. Yes, sir.

Q. How many seasons?

A. Four seasons.

Q. During what years?

A. '89, '99, 1900 and 1901.

(Testimony of W. H. Bergman.)

Q. What companies and on what steamers were you employed during those years?

A. The A. C. Company on the steamer "Yukon," the "Bella" and the "Leah," and the last season I was on the Government boat, and the last trip of last season I came up as master of the "Oil City" from St. Michael to Dawson—the last boat up.

Q. Do you know the point where the steamer "Robert Kerr" wintered during the winter of 1903 and '04? A. Yes.

Q. Are you familiar with the conditions at that point along the river? A. Yes, sir.

Q. Have you had any experience along the Yukon River during the time of the break-up of the ice in the spring?

A. I saw the ice go out three springs, and I was as master on a boat two springs in winter quarters.

Q. At what points, and what steamers?

A. I was on the steamer "Yukon" in the spring of '99 up the Kaiyak River, and the spring of 1900 I was in Dawson when the ice went out, but the boat I was in command of was down the river at Andreasfski.

Q. The ice forms jams in the river in the break-up in the spring. A. Yes, sir.

Q. About how far apart do those jams usually form?

(Testimony of W. H. Bergman.)

A. Well, you take it, any low places in the river, or on islands, will cause jams and sometimes they will be close together and other times they will be miles and miles apart.

Q. To what extent does ice form upon those jams; how far up the river does it extend?

A. Well, the ice jams in the spring of '98 there in the vicinity of Forty Mile, caused an overflow in Dawson and that is fifty miles up the river; they claim that it was from the ice jam down the river.

Q. To what extent does the ice back up behind the jam—how far up the river would it extend above the jam?

A. Sometimes for miles and miles up the river.

Q. How high does it bank up on the jam?

A. It will pile up there in great piles, and some places twenty or thirty or forty feet high.

Q. Do you know how the ice went out of the river during the seasons, the three or four seasons prior to that of 1904, at a point just above Circle City where the "Kerr" was wintered.

A. No, I would not know how the ice went out in 1902 and 1903, I as in the country.

Q. Do you know how it went out during any of the seasons you were in the country?

(Respondent objects.)

A. Yes.

(Testimony of W. H. Bergman.)

Q. What years was that that you were familiar with it.

(Respondent objects as irrelevant, immaterial and incompetent.)

A. I saw the ice go out at Dawson in the spring of 1898, and also in 1900.

Q. Do you know how it went out at Circle City during those seasons?

A. No, I was not there.

Q. You do not know whether it passed through this slough, or went around the main body of the river? A. They always claim—

Mr. BRONSON.—I object to the witness testifying to what somebody else told him.

Q. (Mr. BOGLE.) Well, state what the general understanding in the country is as to how it went out.

(Respondent objects as irrelevant, immaterial, incompetent and hearsay.)

A. The slough runs ice in the spring when the river opens, and the water is high.

Q. Did you see the steamer "Lightning" in the spring of 1904?

A. No, sir, I did not happen to see the "Lightning"; I saw her in Dawson in the summer.

Q. Do you know whether she was damaged or not during the winter?

(Testimony of W. H. Bergman.)

(Respondent objects as irrelevant, immaterial and incompetent.)

A. I know she had a hog in her.

Q. What do you mean?

A. I mean she was humped up.

Q. Did she get it during that winter?

A. I could not say when she got it; I know she was hogged and broken.

Q. What period of time generally elapses between the time when the water becomes warm enough to get above the freezing point, and the time when the river is open for navigation in the spring?

A. That is hard to answer. I have seen it come a warm spell in the middle of March, in the spring of 1900 there was a foot of surface over the ice between Circle City and Dawson on the 18th of March.

Mr. BRONSON.—I object to that as irrelevant, immaterial, incompetent and move to strike out the answer as not responsive to the question.

Q. (Mr. BOGLE.) What was your experience in other years, as to when the first warm weather came—I mean when it would be above the freezing point? A. About the middle of April.

Q. About how high would the thermometer go at any time during the day, during the month of April?

(Testimony of W. H. Bergman.)

A. I could not answer that correctly; it gets quite warm in the middle of April during the day.

Q. Would it be warm enough to thaw out the frost?
A. Yes.

Cross-examination.

Q. (Mr. BRONSON.) It always freezes at night, does it not?

A. Well, you mean up to the middle of April?

Q. Yes.

A. It might be it would freeze a very little.

Q. Well, the thermometer is below the freezing point, is it not?

A. Not any later than the middle of April.

Q. Don't you know that the thermometer rests very often below the freezing point after the ice had started to run, at night?

A. Not in the fall.

Q. I am talking about the spring.

A. It might stay down cold for a night; for an hour or two it would freeze a little scum of ice, after the river opened.

Q. Is it not the fact that there is no considerable part of the twenty-four hours when there is any thawing going on until after the river is open?

A. There is considerable thawing before the river opens.

(Testimony of W. H. Bergman.)

Q. During the middle of the day?

A. During the middle of the day.

Q. What you have testified here relative to the way the ice goes out around about Circle, is what you have been told by others, is it not?

A. I did not testify to how the ice goes out at Circle.

Q. Didn't you say that the ice usually went through the slough?

A. No, I said that slough runs ice.

Q. That is information which you have obtained from other people, is it not?

A. Indian pilots.

Q. You have not seen it yourself?

A. I never was at Circle when the ice went out.

Redirect Examination.

Q. (Mr. BOGLE.) You were asked about the thawing prior to the opening of navigation. The river cannot be navigated until there is enough thawing to start the water running and take the first out, can it?

A. No, sir.

Q. And doesn't that usually run for six weeks or two months before the ice clears out so that the river is open to navigation? A. Yes.

Q. The thawing begins at the head of the river, does it not? A. Yes, sir.

(Testimony of William B. Jackling.)

Q. And that is south of Circle hundreds of miles, south of Circle City?

A. About three hundred miles.

Q. How far is Dawson from Circle City?

A. I mean Dawson is about three hundred miles.

Q. Then the head waters of the Yukon River are still a long ways south of that, and that is where the thawing begins. A. Yes.

(Testimony of witness closed.)

WILLIAM B. JACKLING, produced as a witness in behalf of libelant being first duly cautioned and sworn, testified as follows:

Q. (Mr. BOGLE.) Where do you live?

A. 420 Seneca Street, Seattle.

Q. What is your business?

A. Marine engineer.

Q. How long have you been engaged in that business? A. About twenty-nine years.

Q. You are duly licensed as an engineer?

A. Yes, sir.

Q. How long have you held a license?

A. (Referring to documents.) I can tell you by a reference.

Q. Well, approximately?

A. Twenty-two years.

(Testimony of William B. Jackling.)

Q. Have you been following that business during all that time?

A. Yes, sir, the majority of the time.

Q. Have you had any experience on the river boats on the Yukon River, between St. Michael and Dawson?

A. Yes, sir.

Q. How many years?

A. I went up there first on the Yukon River in the year 1898, for the N. A. T. & T. Company. From that time on I have been on the Yukon River every year on different boats?

Q. You were chief engineer on the steamer "Robert Kerr" during the season of 1903?

A. Yes, sir.

Q. How long had you been on the steamer "Robert Kerr" prior to that time?

A. Prior to that, I went on her the previous years.

Q. How many trips did you make in the season of 1902 on the "Robert Kerr"?

A. One trip.

Q. How many in 1903.

A. One, and a part of a trip; one full trip and then a trip back to Circle City.

Q. When are the dimensions of the "Kerr"?

A. I think the gross is about 38 foot beam and about 185 or somewhere between 185 and 200 feet—somewhere between 180 and 200 feet—well, I am

(Testimony of William B. Jackling.)

not sure about that, but I should judge somewhere between 180 and 200 foot long.

Q. What is her draught, with say, 200 tons cargo?

A. If I remember rightly, about five feet or a little over probably, probably more than that, or five foot six with the wood and fuel on.

Q. The "Kerr" is equipped with refrigerating machinery and refrigerating chambers?

A. Yes, sir.

Q. What is the character of that equipment?

A. Well, there is two seats of compresses, ammonia compresses, vulcan manufacture.

Q. Generally, is the equipment complete?

A. Yes, sir, very complete.

Q. What are the size of her cold storage chambers, the capacity in tonnage?

A. I should judge about—with the way they stow the meats in cases, I think there is about 220 tons or probably 230 tons.

Q. That is tons weight, you refer to?

A. Yes, sir.

Q. With a full cargo of 220 or 225 tons weight of refrigerated meat, that is about all the cargo should carry, is it not?

A. About all she should carry, yes, sir.

Q. Along the river—

A. Always, excepting the fuel.

(Testimony of William B. Jackling.)

Q. Along the river you have to carry considerable quantities of fuel, do you not?

A. Yes, sir.

Q. Does the "Kerr" burn coal or wood?

A. Wood.

Q. What is the capacity of her boilers?

A. The size you mean?

Q. The size.

A. The size of her boilers are 16 foot long and 42 inches in diameter, each boiler, three of them, cylindrical boilers, return tubular.

Q. Are her engines of proportionate power?

A. Yes, sir; the engines are 20 inch diameter of cylinder and 5 foot stroke.

Q. What time did you leave St. Michael on the last voyage of September, 1903, the voyage when you reached Circle City?

A. Some time during the latter part of August, I could not name the day.

Q. Did you have a full cargo? A. Yes, sir.

Q. Of refrigerated products?

A. Of refrigerated products.

Q. Did you receive that cargo from the steamer "Elihu Thompson"?

A. Yes, sir.

Q. What was the condition of the boilers of the steamer "Robert Kerr" at the time you commenced

(Testimony of William B. Jackling.)

that voyage from St. Michael up the river to Dawson?
A. In good condition, apparently.

Q. Are the boilers on the "Kerr" of sufficient size to furnish steam power enough to carry her against the current of the Yukon River?
A. Yes, sir.

Q. Are those the same boilers which she has had since you first knew the steamer on the river?

A. Yes, sir.

Q. And she has been operating how many years on the Yukon?
A. Since 1898, I think.

Q. Where do you strike the strongest currents on the Yukon River on the trip from St. Michael to Dawson?

A. The strongest currents are on the Yukon Flats, and above Forty Mile.

Q. Is that above or below Circle?

A. One is above Circle and the other below Circle.

Q. On the voyage in question did you pass those currents under your own steam?

A. On the voyage we went as far as Circle City, and we did not pass the upper current.

Q. I mean the current below Circle City?

A. Yes, sir.

Q. How were the "Kerr's" engines at the time you left St. Michael?
A. In good condition.

Q. Was there any defect about any particular

(Testimony of William B. Jackling.)

propelling machinery, either the engines or boilers at the time you left St. Michael? A. None.

Q. Were the boilers overhauled at St. Michael during the time you were in port? A. Yes.

Q. By whom?

A. I had the boiler maker that was employed by the N. C. Co., come over and expand a number of tubes and recalk them.

Q. Does that ordinarily become necessary with river steamers? A. Quite frequently.

Q. Is the man whom you refer to, the Mr. Jones who has just testified? A. Yes.

Q. How many tubes did he repair at that time, do you remember?

A. I should judge he expanded about ninety and went over the balance of the tubes and rebeaded them; went over with the calking tool and rebeaded and expanded about ninety on one end and went over the whole of the ends of the boiler.

Q. Does that cover all three of the boilers?

A. Yes.

Q. Did you apply any test to the boilers after he finished?

A. Yes, sir, after the boilers were cleaned and the tubes expanded and rebeaded we filled them with water and pumped a pressure of 150 pounds, cold water pressure, hydrostatic pressure, or probably a

(Testimony of William B. Jackling.)

trifle over that, and let it stand there, I should judge from fifteen minutes to half an hour.

Q. Is that a severe test to apply to boilers?

A. It is nearly as severe as the United States inspectors on good boilers.

Q. How did she stand it?

A. Well, there was no leak.

Q. You were on the steamer when she went into winter quarters above Circle City?

A. I was on her until she was placed in position for winter quarters, yes, sir.

Q. Are you familiar with the slough where she was moored?

A. Well, nothing only the familiarity I gained by being there in the spring of 1904.

Q. Did the "Kerr" have any difficulty on account of low water in getting up the river on that trip?

A. Yes, sir.

Q. Where did she have the first difficulty?

A. The first difficulty was at Fort Yukon, or right opposite Fort Yukon.

Q. The "Kerr" carried a tow? A. Yes.

Q. When she came from St. Michael.

A. Yes.

Q. Where did she leave the tow.

A. At Fort Yukon.

Q. What was loaded on that barge?

(Testimony of William B. Jackling.)

A. Hay and grain and stores.

Q. What was the difficulty that she experienced at Fort Yukon?

A. Unable to get over a bar, low water.

Q. How did she finally get over it?

A. Well, we went back from the bar and landed our scow at Fort Yukon and moored it, and during the evening or night I think the water had raised a trifle, and we passed over that bar that we struck on the day before, successfully, touched it as we went over, and finally pushed our way over it.

Q. Where did you strike the next difficulty.

A. The next difficulty we struck was with the bar they call the Two Pipe Bar.

Q. Do you remember the date when you struck that bar?

A. No, I do not; I know we were there six or seven days.

Q. Do you remember—is that the bar that the “Rock Island” endeavored to relieve you from?

A. Yes.

Q. How many days were you on the bar when the “Rock Island” tried to relieve you?

A. I think we were on there two or three days, I am not sure exactly, but I think about two or three days.

Q. You did finally get off?

(Testimony of William B. Jackling.)

A. Yes, we got off.

Q. How far is that bar below Circle City?

A. Just about fifty miles, probably less.

Q. How was the water flowing at that time, was it getting lower?

A. Getting lower all the time.

Q. Was there any ice showing in the river at that time?

A. Nothing except a little scale ice in the sloughs where there was no current.

Q. After you got off the bar at Two Pipe Bar, did you have any other difficulty on account of bars or low water before you reached Circle City?

A. Yes, at Twelve Mile Bar.

Q. How did you manage to get over that bar?

A. We discharged a great portion of our cargo into the steamer "Lightning" and then—

Q. Do you remember how many voyages the "Lightning" made with cargo from the "Kerr"?

A. Two or three, I could not say exactly, probably more, but I do not think it was any less than three.

Q. What did she do with the cargo when she took it from the "Kerr," where did she take it to and leave it?

A. She took a part of it up to Circle City and

(Testimony of William B. Jackling.)

discharged it there and came back and took another cargo.

Q. Did she have a barge that she utilized?

A. Yes, she had a barge.

Q. Was part of the cargo carried in the barge?

A. A part of the cargo was carried in the barge, yes, sir.

Q. How long did it take to lighter the cargo in that way, so as to enable you to cross Twelve Mile Bar, how many days were you detained there in this transfer of the cargo.

A. I cannot say for certain; it was two or three days; somewhere between two and four days altogether.

Q. Did you pick up your cargo again after you got over the bar?

A. No, sir, she took it on up—we took a part of it on board at Circle City.

Q. What became of the other?

A. The "Lightning" took that on up the river, and made an effort to get to Dawson with it.

Q. Was there any ice in the river at that time as far down as Circle City, at the time the "Lightning" left the "Kerr" at Circle?

A. I think there was a little scale ice; it don't seem to me there was any ice at Circle City, but the water was extremely low and they could not—

(Testimony of William B. Jackling.)

Q. What bars are there above Circle City, between there and Dawson?

A. The first bar above there, I think, is called the Tacoma bar.

Q. You are familiar with the stage of water over those bars?

A. Ordinarily, yes.

Q. In your judgment, would the "Kerr" have been able to have crossed those bar?

A. Not as I remember it from going up in the "Lightning," she would have been unable to cross with her cargo on her.

Q. How far above the company's store at Circle City was the "Kerr" moored?

A. Well, I should judge a thousand yards.

Q. Where was she moored, in what kind of water?

A. In still water, in the mouth of the slough.

Q. Is the head of that slough open or closed?

A. Well, it was closed the last year when I came down through the slough, I came down through that slough and the slough was closed above; the river was below the mouth of the slough.

Q. You stated you had no personal knowledge as to how it was previous years?

A. No.

Q. That was in the spring of 1904, you came down?

A. Yes, sir.

Q. You went in in the spring of 1904 to where the "Kerr" had wintered, didn't you?

A. Yes, sir.

(Testimony of William B. Jackling.)

Q. What time did you leave the Sound here?

A. I think I left here shortly after the 15th of March; it seems to me that Captain Blair, the pilot of the steamer and myself—

Q. What route did you take to get in there?

A. I went from here to Skagway, and from Skagway to White Horse, and from White Horse to Dawson, and then on down the river.

Q. That was prior to the opening of navigation?

A. Yes, sir.

Q. You went in over the ice? A. Yes, sir.

Q. What force did you and Captain Blair take with you when you went in to the “Kerr”?

A. I took in a fireman and two oilers, I think, and Captain Blair took in for the deck department, four or five or six men.

Q. When did you reach the “Kerr”?

A. I think we got in there about the 5th or 6th of April.

Q. Describe, in a general way, what was done by your party towards saving the “Kerr” and avoiding danger of loss.

(Respondent objects as irrelevant, immaterial and incompetent.)

A. The engineer’s department went to work to get the engines put together; they are always taken apart—engines and boilers are taken apart—the

(Testimony of William B. Jackling.)

boilers are opened and cleaned out and dried, and the engines are taken apart and oiled in the fall, and put together in the spring. After our arrival in Circle City the engineer's department proceeded to put the engines in condition and to get the boilers in condition and to put them together, and make joints and put pipes together that had to be severed in the fall of the year, and get ready for steam. During this time the deck department, with the men we took down with us and what they could hire in Circle City, were sawing ice and getting the ice out of the way so as to move the boat farther ahead under the side of the slough, to avoid the ice that was supposed to run in the break-up.

Q. In point of fact, did any ice come down through the slough and break up?

A. Very little ice came down through the slough that year.

Q. Mr. Jackling, have you had any experience in operating refrigerator machinery?

A. Yes, a little.

Q. Do you know about what temperature is required to preserve frozen meats, so they will not deteriorate or spoil?

A. Well, yes, I think I do.

Q. About what temperature is necessary to preserve them?

(Testimony of William B. Jackling.)

A. Well, meats, beef, pork and mutton requires to be held not higher 27 degrees Fahrenheit, and turkeys or ducks and things like that, they try to keep lower, say twenty-five or twenty-six. Beef will stand the highest temperature, which is about twenty-seven degrees and remain all right for awhile.

Q. What is the effect upon beef, mutton, poultry and fish which has been carried in refrigeration, if it is permitted to stay in a temperature above that so as to thaw to any extent?

A. The poultry will spoil; turkeys will spoil immediately, and it is hard to tell—chickens will stand pretty well and ducks will stand quite well, but turkeys will destroy rapidly, and pork will destroy rapidly; mutton and beef will stand a higher temperature for a short time.

Q. What would be the effect if beef and mutton, frozen, was exposed to a temperature of thirty-three for a period of ten days?

A. You would not have any beef or mutton; it would be destroyed; that is, you take beef after being frozen and then let it remain for a period of ten days at a temperature of thirty-three, it would destroy more rapidly than fresh beef that was killed and hung out at thirty-three. It would be destroyed altogether—it would destroy in five days.

(Testimony of William B. Jackling.)

Q. Was it practicable, or possible to have made a cache or ice-house there at Circle City, or opposite or near the point where the "Kerr" was, and have carried this cargo of refrigerated products in this ice-house or cache during the spring, until the river was clear, so that it could have been put back on the boat, and preserve it?

A. I think it was; I should judge it was about was practicable.

Q. Explain why.

A. Well, an ice-house, to be built to retain temperatures below 30 degrees, or we will say 27 degrees, would have to be built and have ice in it and around it, and above it; and then the walls should be filled with—there should be asbestos and sawdust spaces, and perfectly insulated, and then drip pans for it, and drains underneath. It is possible to build such a house as that, but it would be impracticable.

Q. Was it possible under the conditions that existed at that point at that time, during the winter?

A. I do not think it was possible to build an ice-house which would have been successful in preserving the meat during the spring.

Q. How was the temperature when you reached the "Kerr" on the 4th of April.

A. On the 5th or 6th of April.

(Testimony of William B. Jackling.)

Q. On the 5th or 6th of April, 1904, how was the temperature at that time?

A. Thawing in the daytimes and freezing nights part of the time.

Q. And when did the river clear out so that it was open to navigation?

A. I think it was possible, but I do not think it the 9th of May, I think, along about that time, between the 8th and 12th of May some place; that is, it was not open for navigation until long after that.

Q. Would it have been possible to have carried the cargo of the "Kerr," approximately 200 tons of refrigerated stuff, during such weather as you had from the time of your arrival on the 6th of April until the river opened so that it could be put back on the boat; in any ice-house which could have been built there at Circle City, with the material available during the fall and winter of 1903 and 1904.

A. Not so as to save the cargo; I do not think you could carry a stock of meats of that kind in any ice-house which you could build; I do not believe it would be possible to build an ice-house in Seattle with all the equipment they have here, and carry 200 tons of beef for two months and to have it intact.

Q. You are speaking of taking refrigerated beef to start with?

(Testimony of William B. Jackling.)

A. I am talking about having to start out with refrigerated beef—beef that had once been frozen.

Q. Assuming that it was possible to have obtained the material and built the best ice-house which could have been built to carry that amount of stuff, what would it have cost to ship the material in there and build it.

Mr. BRONSON.—I object to that on the ground that the witness is not shown to be qualified to testify as to that.

A. I do not know; I should judge it would cost fifty or sixty thousand dollars up there to build an ice-house.

Q. (Mr. BOGLE.) Was there any way, Mr. Jackling, that this cargo could have been saved, except to have moved it during the winter time into Dawson, or leaving it on board the boat and take the chances of the boat being saved?

A. Well, you say to either leave it on the boat—

Q. Yes, was there any other way to save the cargo? A. None that I know of.

Q. What temperature do you maintain on the “Kerr” when she is carrying cargo of refrigerated meats going up?

A. I try to maintain a temperature of about 18 degrees Fahrenheit.

(Testimony of William B. Jackling.)

Q. Did you see the "Lightning" any more after to proceed up the river.

A. I went up on her quite a ways.

Q. Where did you leave her?

A. I left her at a point on the Yukon River opposite Washington Creek.

Q. Did she winter there?

A. Yes, just about where we left her.

Q. What was the condition in the river at the time you left her there?

A. Full of ice. The ice was very thick; we were unable to go through—the "Lightning" was unable to proceed up the river.

Q. Were you there then when she was put into winter quarters? A. Yes, sir.

Q. Was there any thing that the captain could have done with her that he did not do; could he have gotten through to Dawson with her?

A. With the "Lightning"?

Q. Yes. A. No.

Q. The "Lightning" had no refrigeration machinery? A. No, sir.

Q. If the cargo which the "Lightning" had, this refrigerated meat and poultry had been left on board until the following spring, what would have been the result as to the cargo?

(Testimony of William B. Jackling.)

A. You could not have done anything with it at all. You would simply had to have thrown it out in the river.

Q. Did you see the "Lightning" the next spring?

A. Yes, twice.

Q. When you went down the river on the trail did you see her? A. Yes.

Q. What was her condition?

A. I went pass the "Lightning" about 400 yards; by looking out of the sleigh you could just see the "Lightning's" house above the ice, on each side of it; that was going down the river in the early part of April.

Q. She was in the bed of the river or up on the shore?

A. She was close to the shore, under the lea of a bar.

Q. Then did you see her again after the break-up of the ice?

A. Yes, I saw her after we started up the river with the "Kerr."

Q. Where was she then?

A. She was projecting out on the edge of the bank; half of the boat was lying lengthwise of the river, and half of her was on the bank, the other half was out with props under her.

(Testimony of William B. Jackling.)

Cross-examination.

Q. (Mr. BRONSON.) By whom are you employed now, Captain?

A. By nobody at present.

Q. To whom are you under contract?

A. Nobody; I do not know whether I will work for the Pacific Cold Storage Company or who, next spring.

Q. Haven't you got any negotiations on for the Pacific Cold Storage Company for this spring?

A. No, sir.

Q. No arrangements for any employment at all?

A. No, sir.

Q. Did you have any trouble with any of the tubes of the boiler, or either of them, going up the river that last trip? A. No, sir.

Q. What was the dimensions of the cold storage plant on the "Kerr"?

A. I cannot give you the exact dimensions.

Q. As near as you can?

A. I should judge approximately they are about—the two rooms are about 80 foot long, I should judge—that is my judgment—about 16 foot wide by 9 or 10 foot high; those two rooms. Then there is one room about—

Q. You mean those two rooms are each of the dimensions you have given?

(Testimony of William B. Jackling.)

A. Each of about the dimensions I have given, and then there are—hold on— there is one about that size and then there is one of them rooms with a small room taken off of it, 16x8x9, and then forward of that there are two rooms about 16x9 by about 8 I should judge, probably a trifle more.

Q. Then there is one room about 80x16x9?

A. I should judge, and perhaps a trifle more.

Q. And then there is one room about—

A. 72x16x9.

Q. And then there are two?

A. And then there is another room about 8x16x9.

Q. Is that the refrigerator-room?

A. Yes; then there is two forward, each 16x8x9, probably a trifle wider.

Q. That represents the cubical contents of the refrigerator capacity of the "Kerr"? A. Yes.

Q. In other words, that represents the cubical contents of the refrigerator cargo of the "Kerr," or was that space all filled?

A. That space was all filled, I think.

Q. A good deal of that is suspended, is it not?

A. No, sir.

Q. Is it packed solid like a cargo?

A. Yes. That is only my judgment of the sizes of the rooms, you understand.

Q. The length of the "Kerr" is about 185 feet?

(Testimony of William B. Jackling.)

A. Yes, I should judge.

Q. How much of that length would be taken up by her engine-rooms?

A. I should judge about, from the forward bulk-head of the engine-room to the after end, would be thirty or thirty-five feet.

How large are the boiler-room?

A. The boiler-room fits right in between those two forward cold storage rooms.

Q. How much of that is taken by her piston rods and all that?

A. That thirty feet from the stern is taken up by the engine-room entirely (here the witness illustrates the construction of the "Kerr" to the counsel).

Q. What is the point at which water freezes?

A. About 31 degrees, or 32, Fahrenheit.

Q. Nothing thaws below 32, does it?

A. I don't know; I think it does, yes, sir.

Q. Are you willing to give that as your opinion?

A. I am not positive as to thawing below 32; I am laboring under the impression that it does though, a little less than 32 as marked by the average thermometer.

Q. Well, that is the point at which water freezes?

A. Thirty-two degrees Fahrenheit.

(Testimony of William B. Jackling.)

Q. There is considerable timber there at Circle City?
A. No, sir.

Q. Is there not considerable of small timber around there?

A. No, sir, not close to Circle City.

Q. Is there not right below there on the islands?

A. Within five or six miles or ten miles?

Q. Within a mile and a half?
A. No, sir.

Q. What would be your nearest estimate?

A. About seven or eight miles, I should judge.

Q. Is it not a well-known fact that the moss of that county is one of the most perfect natural non-conductors of heat that is known?

A. No, I do not think it is a fact.

Q. Is it not a fact that it never thaws more than a foot beneath that moss in that country?

A. That would not prove that it was a nonconductor of heat.

Q. Is it not a fact that the ground never thaws more than a foot below that moss all through the summer?
A. I do not know that.

Q. Have you had any experience in building ice-houses?

A. No, I have not, not personal experience.

Q. You would not maintain, would you, that anything could thaw within a cake of ice, no matter

(Testimony of William B. Jackling.)

what the temperature outside of that cake of ice would be?

A. If it was frozen in a solid cake of ice I should not maintain it would thaw in there, but I would not maintain that it would not be destroyed in there.

Q. You think it might be destroyed then in a cake of ice? A. Yes, sir.

Q. Don't you know that recently the preserved flesh of pre-historic creatures have been found in Siberia in just as perfect state of preservation as if recently killed, while it must have been in there countless of thousands of years ago, when those animals were frozen in there; don't you know that is a fact?

A. No more than I know that this tremendous diamond has been found in South Africa.

Q. You do not know that as a fact then?

A. No, sir.

Q. You think it would not be possible and practicable to preserve the cargo of the "Kerr" in an ice-house there under the conditions which surrounded the "Kerr" at that time?

A. I do not think it would, not until the spring; no, sir.

Q. How long is it after the ice breaks out of the river until the river is navigable?

A. It is probably seven or eight days.

(Testimony of William B. Jackling.)

Q. And when it goes out it goes out with a rush, does it not? A. Yes, to a great extent.

Q. It passes out in seven or eight days' time?

A. Yes.

Q. The "Kerr" would not have been in any danger until the ice broke up, would it?

A. It would not be in danger until the ice started to run?

Q. Yes.

A. She was in danger continuously.

Q. Was she in danger in the winter?

A. Yes, any boat that is in the Yukon River.

Q. From what source—is any boat that is in a slough in the Yukon River in any danger?

A. The contraction of the ice would break her.

Q. As to her cargo, is there any danger?

A. Wait a moment—a boat in a slough, the contractor of the ice would freeze the sides in.

Q. Is her cargo in any danger?

A. I think it would be if the hull is broke and destroyed.

Q. Did you ever hear of the hull of a boat being destroyed in the middle of the winter?

A. Yes, fifteen or sixteen timbers have been crushed in.

Q. And the boat destroyed?

(Testimony of William B. Jackling.)

A. Well, she was not destroyed, because they cut the ice around her and relieved her.

Q. That is, all the boats in that country are frozen in in the winter-time?

A. Yes, sir, a great many of them—some of them.

Q. They are all, are they not?

A. Some of them are hauled out, and the water recedes, and those that are not frozen in—those that are left in the water are frozen in.

Q. What are they hauled out for?

A. To protect them.

Q. Does it cost as much as the boat is worth to haul them out?

A. In some instances it costs more, so they say, I never hauled a boat out.

Q. This cargo would not have been in any material danger until the ice began to run in the spring, would it?

A. Well, from the time—the material danger until the ice began to run in the spring?

Q. Yes.

A. From the time the boat was put in water quarters?

Q. Yes.

A. I do not think it would be until after the ice began to run.

(Testimony of William B. Jackling.)

Q. Then the time that cargo would have to be protected by removal would be from the time that the indications of the breaking-up of the river in the spring, until the river was navigable?

A. Yes.

Q. You say for seven or eight days?

A. Well, there was—say twenty days, or from ten or fifteen or twenty days.

Q. The danger could not exist until the river was breaking up.

A. Hold on a minute. Now the question is this—the water rises there continually in the river from the time it begins to thaw it—

Q. That is when you begin to cut the ice out?

A. It thaws all the way down the river continually from April until the following fall, and it begins to freeze and there is always a rise and lowering of the water. Now, at Circle City it was thawing there and the ice was rising; just as soon as that ice began to rise the cargo of that boat would have to be removed.

Q. Didn't you, as a matter of fact, cut the ice around the boat? A. Yes.

Q. That prevented any pressure on the boat?

A. It relieves the boat.

Q. That is comparatively a simple process.

A. A simple process.

(Testimony of William B. Jackling.)

Q. So that as soon as you get the ice cut out there was no danger to the boat? A. To the hull.

Q. And you did that? A. Yes.

Q. So that the only time that you would have to preserve that cargo off from the "Robert Kerr" would be from the time when it was in danger of the river breaking up, until the river navigation was completed? A. Yes.

Q. Do you consider that it would have been impracticable for that length of time to have constructed, with all of the ice you had at hand there and other material, as close as it was, to have constructed, we will say, a temporary ice-house of an efficient character, not to last all summer, but to last two weeks.

A. I think it would, with the help we had there it would have been impossible. I do not think we could have got men enough in Circle City.

Q. How far is it to Dawson City?

A. About 300 miles, I should judge.

Q. How long would it take to get men down from Dawson?

A. You could not get them down there at that time at all.

Q. How did you get down yourself?

A. I went down in the early part of April; I left about the latter part of March and I went down in

(Testimony of William B. Jackling.)

a stage sled part of the way and walked part of the way.

Q. You went down in a sleigh? A. Yes.

Q. Didn't you say you went by the "Lightning" in the sleigh? A. Yes, in a sleigh.

Q. How far was that from Circle City?

A. About sixty-five miles above Circle City.

Q. Where were you sledding?

A. I was sledding?

A. I was sledding—

Q. On the river?

A. On the river.

Q. What clothing did you have?

A. I was dressed about like I am now; in fact I had this same coat and vest on.

Q. Did you have any overcoat or furs?

A. I had a light overcoat.

Q. Right in the sleigh? A. Yes.

Q. You did not have any heavier clothing?

A. No, sir; I had a coat in case it got cold, I had a fur cape with me.

Redirect Examination.

Q. (Mr. BOGLE.) Mr. Jackling, was there any lumber at Circle City out of which you could have insulated any building for an ice-house.

A. No, sir, I do not think there was any lumber.

(Testimony of William B. Jackling.)

Q. Was there any building which could have been used as an ice-house for the cargo?

A. There was buildings there; I do not know whether they could use them—I don't see how they could utilize them for an ice-house—they would have to insulate them.

Q. Then you had neither the material nor the men?

A. No, sir. Even if we had the material we didn't have the men. You must remember that the "Kerr" was not located at Circle City—she was at Circle and not at Circle—she was a thousand yards above the stores, and then she was a thousand yards from the bank, where it was utterly impossible to get her close to Circle City.

Q. Is it possible to determine in advance just when the ice is going to break up in the river?

A. No, sir; I wish I could.

Q. Even if you are there and you see it, can you tell within ten days when it is going to break up?

A. No, sir.

Q. How much water was there in the slough when you cut away the ice and removed the cargo?

A. Right at the forward end of the "Kerr" there was about six inches of water underneath when I measured down, and when she struck I measured about six inches of water under the bow, and then I cut the ice away from her and then they hauled her

(Testimony of William B. Jackling.)

up towards the big wing-dam that they built to protect her against the ice coming down the slough.

Q. She had no cargo in at that time?

A. No, sir.

Q. How much additional draft would the full cargo have given her?

Q. I should judge it would have given her three foot additional draft.

Q. And if she had any cargo in her she would have been on the ground? A. Yes, sir.

Q. Is there any other refrigerator steamer on the Yukon River?

A. None on the Yukon River directly; there is no refrigerator steamer—there are steamers on the river with a little bit of refrigerator plant for their own stores which would refrigerate a ton or so, just an ice house.

Q. There was no steamer could have taken care of the “Kerr’s” cargo from Circle City to Dawson if the “Kerr” had been lost. A. No, sir.

Q. If the “Kerr” had been lost during the winter and you had the cargo ashore and saved, you could not have saved it.

(Respondent objects as irrelevant, imaterial and incompetent.)

A. I do not see how they could have saved it; no, sir.

(Testimony of William B. Jackling.)

Q. (Mr. BRONSON.) As a matter of fact, the "Kerr" was not lost or injured, was she?

A. No, sir, she was not lost or injured.

Q. She was not injured? A. No, sir.

(Testimony of witness closed. Whereupon further proceedings are adjourned to be taken up by agreement between the parties.)

Seattle, March 27, 1905.

Continuation of proceedings pursuant to agreement.

Present: Mr. BOGGLE, for the Libelant.

Mr. BRONSON, for the Claimant.

CHARLES RICHARDSON, a witness produced on behalf of the libelant being duly sworn, testified as follows:

Q. (Mr. BOGGLE.) State your name, residence, and occupation?

A. Charles Richardson; Tacoma, Washington; president of the Pacific Cold Storage Company.

Q. How long have you been president of the Pacific Cold Storage Company?

A. Since its organization, about six or seven years, I think.

Q. You know the steamer "Robert Kerr?"

A. Yes, sir.

Q. To whom does that belong?

(Testimony of Charles Richardson.)

A. It belongs to the Pacific Cold Storage Company.

Q. How long has that company owned the "Kerr?"

A. I think about four years.

Q. Where has the "Kerr" been operating during that time?

A. Between Dawson and St. Michael, Alaska.

Q. Has she been operated every year?

A. Yes, sir.

Q. How many trips a year does she make?

A. She has always made, I think two, excepting last year she made one trip.

Q. What was the reason she made only one trip last year?

Mr. BRONSON.—I object as incompetent, irrelevant and immaterial.

A. She was caught in the ice and we did not know whether she would come out in time to get the cargo off her, so we were limited to one trip on that account.

Q. You say it was caught in the ice. When?

A. I should say in September; in the latter part of September, 1903.

Q. From what point is the cargo shipped to make connection with the "Kerr" at St. Michael?

(Testimony of Charles Richardson.)

Mr. BRONSON.—I object as incompetent, irrelevant and immaterial.

A. From Tacoma.

Q. What other steamers does the Pacific Cold Storage Company operate in connection with the “Kerr?”

A. The “Elihue Thompson.”

Q. Is that the steamer that runs between Tacoma and St. Michael?

A. Yes, sir, and carries cargo—cold storage for the “Kerr.”

Q. Is the steamer “Elihue Thompson” equipped with cold storage accommodations?

A. Yes, sir, she has cold storage for the purpose of supplying branches of the cold storage company’s business.

Q. At what points in the northern country does the Pacific Cold Storage Company carry on business?

A. At Nome, St. Michael, Gibbon, Eagle, Dawson, and Fairbanks.

Q. In what kind of products does the company deal?

A. Cold storage products, meats most generally.

Q. Are all these stations supplied by means of the “Elihue Thompson” and the “Robert Kerr?”

Mr. BRONSON.—I object, as incompetent, irrelevant and immaterial.

(Testimony of Charles Richardson.)

A. Yes, excepting some that is shipped on the hoof and some merchandise other than that shipped in cold storage.

Q. Where does the "Kerr" ordinarily winter?

A. She has wintered at Dawson every year except in the past year, when she wintered at Cheno.

Q. Where did she winter in the winter of 1903 and 1904?

A. She wintered at a point near Circle, I think, in 1903; that is the winter of 1903-04, that is in September, until the opening of navigation.

Q. What is the carrying capacity of the steamer "Robert Kerr?"

A. Well, the cold storage capacity is about 115 tons, or thereabouts. It has varied, according to the way it is stowed.

Q. How much?

A. 115 tons is about the maximum; and we get on her from 100 to 108 or 110, I think, as a rule—I mean 200, I did not mean 100. 215, tons, when I said 110 I meant 215 tons. We generally put on her from 200 to 208 to 210 tons.

Q. What carrying capacity has she outside of her cold storage.

A. Well, it is estimated to be about between forty to fifty tons, ordinarily.

(Testimony of Charles Richardson.)

Q. What fuel does she use from St. Michael until she reaches the timber belt along the Yukon river?

A. Why, we generally put about forty or fifty tons of coal on.

Q. Do you know at what point she first strikes timber, where she gets wood for fuel?

A. I could not say, but sometime after she gets over the flats in the mouth of the river. I don't know just where, how far up it is.

Q. Did the Pacific Cold Storage Company insure the cargo that was sent up on the "Elihue Thompson, leaving Tacoma in the latter part of July, 1903?

A. It did.

Q. With what company did you effect the insurance?

A. The St. Paul, Fire and Marine Insurance Company.

Q. Look at the paper I now hand you and state if that is the policy of insurance that was issued by the Respondent Company, covering that voyage?

A. It is.

Mr. BOGLE.—I offer the paper in evidence.

(Paper marked Libelant's Exhibit "G" filed and returned herewith.)

Q. Did you act for the Pacific Cold Storage Company in effecting this insurance? A. I did.

(Testimony of Charles Richardson.)

Q. Who represented the Respondent Company in the contract or arrangement for taking out the insurance?

Mr. BRONSON.—I object as incompetent, irrelevant and immaterial.

A. A. M. Harrison & Co.

Q. What particular person represented that party?

Mr. BRONSON.—I renew my objection.

A. I talked particularly with Mr. Harrison with regard to the policy on the Yukon on cargo, in the early part of the season, and arranged with him as to the kind of policy that he would issue to us during the season. Afterwards I talked with Mr. Cleverden and Mr. Houck.

Q. At the time this policy was issued, all these agents knew of the character of the cargo that was being shipped?

A. They did; it was particularly discussed. Both with Harrison and other representatives of M. C. Harrison & Co.

Q. Did you exhibit the invoice of the shipment, or state the cost price of the shipment at the time to the party who issued this policy to you?

A. I did.

Q. Who was that?

(Testimony of Charles Richardson.)

A. I think it was Mr. Houck at that time. I remember calling Mr. Denman in at the time the policy was issued and getting a statement from him of the amount of the shipment and explained the amount to Mr. Houck at the time the policy was issued.

Q. You were not north during the fall of 1903, and you have no personal knowledge of the disaster that occurred to the cargo on the trip?

A. None, excepting such as I received by correspondence and in discussions with different employees and officers of the company.

Q. About what time did you first get information that the "Kerr" was stranded or would be unable to reach Dawson?

A. I could not tell the date definitely, but it was the latter part of September or the early part of October, as I remember it, of 1903.

Q. What inquiry, if any, did you make to ascertain the position of the "Kerr", and whether she was in a position of safety or probable danger, and what was the result of the inquiries made by you?

A. I had the superintendent of the company make careful inquiry and submit it to me; sketches of her position on the Yukon, showing in what way she lay. I also made inquiry in a general way of everybody that I could find who was familiar with the situation up there, and estimated, as I could the general history

(Testimony of Charles Richardson.)

of the location and the dangers in which the "Kerr" was.

Mr. BRONSON.—I move to strike out the part of the answer referring to the dangers in which the "Kerr" was, as not responsive to the question, and upon the ground that so far the witness has not shown that he personally knows anything about it, or did know anything about it, so as to qualify him to testify from his own knowledge.

Q. Can you recall the names of any of the persons from whom you obtained the information as to the conditions prevailing along the Yukon River at the point where the "Kerr" was purported to be wintering?

A. It is rather difficult for me to say, because a great deal of the talk was with the superintendent of the company who saw various people; but I am quite sure that I talked with the engineer of the "Kerr" later or with Captain Blair, and I think Captain Depew; and there were a number of captains brought into the office, and other people whose names I do not remember. I remember having on my desk a plat and a description of it, and referring to it for quite a number of people, I do not remember all their names.

Q. Did you ascertain from them their opinion as

(Testimony of Charles Richardson.)

to whether the "Kerr" was in a position of safety or danger. A. I did.

Q. From all the information obtained by you during the fall of 1903, what conclusion did you reach as to whether the cargo on board the "Kerr" was in danger or not?

Mr. BRONSON.—I object as incompetent, irrelevant and immaterial; and on further ground that the witness is attempting to testify as to things which were told him by others, and conclusions which he is supposed to have drawn from things that were told him by others, and constituting merely conclusions of the witness and based on hearsay evidence. And the further objection that the conclusions which the witness is asked to state must have been formed at a time long subsequent to the transactions in question.

A. I came to the conclusion that there would be very little hopes of saving the cargo in the condition in which she was. This conclusion was based upon the statements of those familiar with the river; and without exception they advised me that there was almost no chance to save it except by removal.

Mr. BRONSON.—I object and move to strike out the latter part of the answer of the witness, in addition to the grounds heretofore stated and on the further ground that it is not responsive to the question.

(Testimony of Charles Richardson.)

Q. Did you, as president of the Cold Storage Company give any instructions as to the removal of the cargo that was on board the "Kerr," during the winter?

Mr. BRONSON.—I object as incompetent, irrelevant and immaterial.

A. I am very sure that I did; but I referred the whole matter or a great portion of it to our counsel, Mr. Bogle, who acted for us in the main in connection with it. My recollection is, however, that I gave instructions to remove the "Kerr's" cargo.

Q. What report, if any, did you make to the St. Paul Fire and Marine Insurance Company, or to M. C. Harrison & Co. agents, as to the position of the steamer "Kerr"?

Mr. BRONSON.—I object as incompetent, irrelevant and immaterial.

A. I reported to them the condition in which she was. Showed them drawings, showing the way in which she was situated and told them what information I had had as to the danger of the steamer and cargo, and discussed with them the question of the advisability of the removal of the cargo.

Q. What directions, if any, did you receive from them with regard to the removal of the cargo?

A. They said they were in a better position to judge—

(Testimony of Charles Richardson.)

Mr. BRONSON.—I object as incompetent, irrelevant and immaterial, and not the best evidence.

A. They said they were in the best position to judge of the danger to the cargo and the advisability of its removal and to go ahead and act upon our best judgment, and that they would stand by us in it, and it would be satisfactory to them.

Q. Did you ever, at any time, take up with Mr. M. C. Harrison or with Mr. Houck, the agent of M. C. Harrison & Co., the question of expenses of the removal and the question of the insurance company putting up the money to pay for the removal?

Mr. BRONSON.—I object as incompetent, irrelevant and immaterial.

A. I did.

Q. At what time was that?

A. I am unable to state the time accurately, but it must have been in October or the early part of November. I cannot fix the date definitely. I think Harrison was here once himself, and the question was discussed; and I discussed it on numerous occasions with Mr. Houck; and they both promised on many occasions, as late as January and as early as October or November, that they would make an advance towards removal of the cargo of anywhere from twenty to thirty thousand dollars. Papers were prepared on several occasions, I think, in Mr.

(Testimony of Charles Richardson.)

Bogle's office, showing some of these agreements, but were not signed, for some reason. The main reason being urged by Harrison & Co. at a later day, that they could not get their re-insurers to advance the money.

Mr. BRONSON.—I object to all the latter part of his answer and move to strike it out as not responsive to the question, and an answer such as proctor for the respondent could not anticipate in order to object in the first instance.

Q. Were M. C. Harrington & Co. the agents of the respondent company informed by you that the cargo would be removed during the winter, overland to Dawson?

Mr. BRONSON.—I renew my last objection.

A. They were, and it was with the understanding that they were to pay part of the removal charges, if it was removed.

Mr. BRONSON.—I object and move to strike out the latter part of the answer for the same reasons, and further that there is no authority shown for making the statement and it is not the best evidence.

Q. Did you on December 14, 1903, send a telegram to M. C. Harrison & Co. as follows:

(Testimony of Charles Richardson.)

“Tacoma, Washington, Dec. 14, 1903.

M. C. Harrison & Co., 319 California St. San Francisco.

I am surprised at the treatment we are receiving regarding insurance. I insist upon prompt action.

(Signed) CHARLES RICHARDSON.”

Mr. BRONSON.—I object as incompetent, irrelevant and immaterial and on the ground that the telegram purports to have been sent long subsequent to the occurrence of the matters which are in issue here.

A. Yes, I sent that telegram.

Q. Have you a press copy in your office?

A. I have never examined to see; but I always take a press copy of everything of that sort.

Q. Will you send that to the Commissioner so that it can be filed as an exhibit?

A. Yes, sir.

(Copy to be marked Libelant's Exhibit “H.”)

Q. Look at the paper that I hand you, and state if that is the answer received by you in reply to that telegram from Harrison? A. It is.

Mr. BOGLE.—I offer this in evidence.

Mr. BRONSON.—I object to the introduction of the paper as incompetent, irrelevant and immaterial;

(Testimony of Charles Richardson.)

not proved to have been authorized to be sent by the respondent company.

Paper marked Libelant's Exhibit "I," filed and returned herewith.

Q. Was this telegram delivered to you by the telegraph company in due course? A. It was.

Q. Did you at any time have a conversation with Harrison yourself, after that, on the subject of this loss, with reference to the respondent company making an advance to pay the expenses of forwarding these goods to Dawson?

A. There were a great number of conversations had on the subject. I remember distinctly a conversation in San Francisco with Mr. Harrison, in January of 1904, when I was on my way to London, I went by to see them especially and I had a conversation with him in San Francisco, on that subject.

Q. State what that conversation was?

A. Why I complained to Harrison that he had not kept his agreements to put up a part of the forwarding charges, and he stated—

Mr. BRONSON.—I object to all this as incompetent, irrelevant and immaterial.

A. He did not deny the understanding that he was to do so, but he stated the difficulty was with the re-insurers in London. I told him that I was on my way to London then and he said he wished me to see them, and thought that perhaps I could influence

(Testimony of Charles Richardson.)

them to change their attitude in that respect. He did give me a letter to his correspondent in London, which turned out to be merely a letter of introduction; but asked me to take it up with him after I got there, which I did.

Q. Did the respondent company or M. C. Harrison & Co., or any one on behalf of that company, ever at any time, object to the forwarding of these goods overland to Dawson during the winter of 1903 and 1904?

Mr. BRONSON.—I object as incompetent, irrelevant and immaterial.

A. They did not. The first objection I think, that I heard, was after the adjustment had been completed, or about that time.

Q. Was any claim made by any one on behalf of the respondent company at any time, that the cargo was considered safe or that there was no necessity for removing it in order to save it?

Mr. BRONSON.—I make the same objection.

A. No, sir, there was no intimation of that kind or claim made of that sort.

Q. At the time of these various conversations, when it was being arranged to forward these goods overland to Dawson during the winter, did the respondent or M. C. Harrison & Company or any rep-

(Testimony of Charles Richardson.)

representatives of theirs at any time disclaim liability on the part of the respondent company for these forward charges or the proper proportion of them or whatever it might be ascertained to be?

Mr. BRONSON.—I renew my objection.

A. They never did, but, on the contrary I supposed all the time they were acting in direct harmony with us in removing the goods.

Q. Where were the expenses or forwarding these goods paid?

Mr. BRONSON.—I object as incompetent, irrelevant and immaterial.

A. Paid at Dawson.

Q. Were the vouchers forwarded from the Dawson office to the home office in Tacoma? Yes, sir.

Q. When were they forwarded, all at one time, or during the time the goods were being forwarded?

A. Why, they were forwarded over a period of several months; the vouchers were taken for each separate liability and they were forwarded as they were taken; the rest of them I don't think came in until quite late in the season.

Q. Did the libelant company furnish M. C. Harrison & Co. with itemized statements of the expenses from time to time, while the goods were being forwarded? A. They did.

(Testimony of Charles Richardson.)

Q. Can you state, approximately when the first of these statements was furnished to M. C. Harrison & Co.?

A. It would be a mere guess, Mr. Bogle; I have no recollection of the exact date; but I suppose it must have been the expenses incurred by the "Lightning" and that should have come in, I should say in October or November.

Q. Were these statements furnished M. C. Harrison & Co., as fast as received by the Cold Storage Company at its Tacoma office?

A. I think so.

Q. Did the respondent company ever make any payment upon this loss, if so when and how much?

A. They made payment of fifteen thousand dollars; the payment went into effect, I think, sometime in June. It was agreed or understood in April or May, I cannot remember the exact day, but I think it was April or May, 1904; it was at the time that Mr. Harrison was up here from San Francisco.

Q. Did the libelant company take a receipt for these payments? A. I think so.

Q. Have you a copy of the receipt that was given for this fifteen thousand dollars? A. I have.

Mr. BOGLE.—I offer this receipt in evidence.

(Paper marked Libelant's Exhibit "J," filed and returned herewith.)

(Testimony of Charles Richardson.)

Q. Did you have a conversation with Mr. Harrison up to the time this money was paid or at the time the agreement was made, that he would pay it?

A. I had a conversation, both with Harrison and with Mr. Cleverden, agent of M. C. Harrison & Co., who came to see me about this matter, the exact date of which I cannot remember, but it was the time that Harrison visited Seattle, sometime before the 31st of May. Our policies expired on the "Thompson" on the 31st of May, and Mr. Harrison and Mr. Cleverden wished to renew their business with us. I had a conversation with Mr. Harrison and also with Mr. Cleverden.

Q. Just tell what the conversation was.

Mr. BRONSON.—I object as incompetent, irrelevant and immaterial.

A. They asked us to renew—to give them our insurance business for the coming season. I declined to do it and stated to Mr. Harrison and to Mr. Cleverden that they had made us repeated promises that they would pay a fair share of the expenses of removing these goods and had failed to keep their promises. That I would have no further business transactions with them unless they made a substantial payment to convince me of their good faith in this matter. They stated that there would be no trouble about the payment of the insurance as soon

(Testimony of Charles Richardson.)

as the adjuster had settled it and that they would make an advance of at least fifteen thousand dollars to show their good faith. And that is the advance for which I hand you the receipt.

Q. I hand you a letter purporting to be from M. C. Harrison & Co., to you under date of December 17th, 1903, together with copies of two telegrams attached thereto. I will ask you if that letter was received by you in due course of mail, with these telegrams attached?

A. They were received in the condition they now appear.

Q. Do you know M. C. Harrison's handwriting?

A. I do.

Q. Are the initials to the letter in his handwriting?

A. Yes, sir.

Mr. BOGGLE.—I offer these in evidence.

(Papers marked Libelant's Exhibit "K," filed and returned herewith.)

Q. This claim was submitted for adjustment, was it?

A. It was.

Q. Who was the adjuster?

A. I think Mr. H. S. Alexander, of San Francisco.

Q. E. A. Alexander?

A. Yes, that is right.

Q. Look at the paper I now hand you, and state

(Testimony of Charles Richardson.)

if that is the adjustment, as furnished the libelant company by Mr. Alexander. A. It is.

Mr. BOGLE.—I object as incompetent, irrelevant and immaterial; it has not been properly authenticated; it is not shown that it was fairly or equitably made, and for the various reasons set forth in respondent's answer.

(Paper marked Libelant's Exhibit "L," filed and returned herewith.)

Q. Are you familiar with the handwriting of Mr. Alexander? I am.

Q. Now look at the paper I hand you; is that the signature of Alexander, the adjuster? (Referring to Libelant's Exhibit "L.") A. It is.

Q. Was that certificate furnished (handing paper to witness) by him with the adjustment to the libelant company? A. It was.

Q. At about the same time of the adjustment?

A. At about the same time; yes, sir.

Mr. BOGLE.—I offer this paper in evidence.

Mr. BRONSON.—I object to the offer of this paper upon the ground that the same is incompetent, irrelevant and immaterial; it is not shown that the adjustment was made by anybody's consent; it is not shown that the adjuster was competent, or that the same was made in a legal or lawful manner, or that it

(Testimony of Charles Richardson.)

was based upon facts claimed to have existed; and upon the further ground that the adjustment was upon extraneous agreements supposed to exist, not in any way connected with the policy of insurance herein. I desire these same objections, the latter part of them, to apply to the offer of the adjustment itself.

(Paper marked Libelant's Exhibit "M," filed and returned herewith.)

Q. Did the libelant company submit to the adjuster the insurance policy in this case, and the vouchers for the expenditures embodied in the adjustment which are claimed by the libelant company? A. It did.

Q. Did you submit the original invoices or copies of the original invoices of the goods?

A. Yes. I do not remember whether they were original or copies, but it was either the original or copies that were submitted. I am inclined to think that we sent to the adjuster the originals.

Q. Did you submit any evidence of the value of these goods at Dawson?

A. That was done mainly by our counsel. I could only answer as to my understanding about it. I understood that was submitted through our counsel.

Q. Referring now to the steamer "Kerr." Has

(Testimony of Charles Richardson.)

she ever had any difficulty prior to this trip in the fall of 1903, which is now in question, to make a voyage from St. Michael to Dawson, since this libelant company has owned her?

Mr. BRONSON.—I object as incompetent, irrelevant and immaterial.

A. Never.

Q. What amount of cargo has she usually carried on previous trips?

Mr. BRONSON.—I renew my last objection.

A. She has less cargo, I think, this time than usual, because we had a barge that carried a portion of the cargo in the way of merchandise, that had been at times put upon the "Kerr." I think she had less tons, less cold storage; I am not sure about that.

Q. Has she ever had any mishap or breakdown or disaster of any kind during the four years the company owned her, prior to this voyage?

Mr. BRONSON.—I object as incompetent, irrelevant and immaterial.

A. I do not recall anything; nothing at least that amounted to anything.

Q. There has been some testimony in this case that she had been hogged, what do you know about that?

A. Why, that was said of her when she left, when

(Testimony of Charles Richardson.)

she was bought by Waterhouse & Co., years ago, before we purchased her; and when we bought her there was some claim of that kind; and we have had her strengthened since we have had her, but we never had any trouble on that account.

Q. Had she ever any trouble with her boilers?

A. Never heard of any until the claim was made in this suit, except the usual repairs that are made every season. There was something about the mud in the river that requires new tubing to be put in every year; I have heard that requirement discussed, but I have never heard of any difficulty with the boilers except the usual repairs.

Cross-examination.

Q. (Mr. BRONSON.) Are you familiar, Mr. Richardson, with the "Robert Kerr," yourself?

A. No; I have no knowledge of her excepting the knowledge that I have as president of the company through the reports and all the general sources of information?

Q. You were not in the Yukon country in the fall of 1903, were you? A. No, sir.

Q. Or in the spring of 1904? A. No, sir.

Q. You say that the capacity of the "Kerr" is supposed to be in cold storage, about 215 tons?

A. Thereabouts, yes, sir.

(Testimony of Charles Richardson.)

Q. Is that weight measurement? A. Yes.

Q. Do you know what her capacity is in cubic measurement?

A. When we bought her, I understood before she was refrigerated, that it was about 500 tons carrying capacity.

Q. No; I mean what her cold storage cubical room capacity is.

A. I have not figured it out; but you may figure about 80 cubic feet to the ton.

Q. That is the ordinary rule of cold storage?

A. Yes, about 80 cubic feet to the ton.

Q. Let me explain what I am trying to get at, whether considering the cargo which she is designed to carry and the relative weight of that cargo, whether you apply the same rules to her capacity or not?

A. Yes, we figure for cold storage in the neighborhood of 80 cubic feet to the ton; so 200 times 80 cubic feet would be her cubical capacity; that would not be exactly but it would be approximately.

Q. You testified that you had had some correspondence with M. C. Harrison & Co., relative to taking steps to transport the cargo of the Kerr to Dawson?

A. Most of it was verbal conversations. I think, may be, there may be some letters, but I am not sure; if there are Mr. Bogle has them.

(Testimony of Charles Richardson.)

Q. You had conversations relative to it?

A. Yes.

Q. Can you tell about when that was?

A. I can be very accurate about some of them, and I can tell you—

Q. How accurately can you come to the first ones?

A. The first ones were I should say from the middle or early part of October, 1903, until the early part of November, 1903. It is a mere guess, but it was before there were any contracts made for the removal of the cargo; the contracts will show the dates. The one in which I talked with Harrison in San Francisco was about the 13th of January, or thereabouts, 1904. I think I left here on the 9th of January and went by way of San Francisco, and it must have been along the 12th or 13th of January; and my other conversations about the advances were within a month or six weeks of the expiration of our—

Q. I only refer to these relative to the removal. When were these contracts you speak of with reference to the removal of the cargo, made?

A. I could not say the exact date; I have not seen the papers for some time.

Q. They were made up in Dawson?

A. They were made in Dawson, under instructions from our counsel, most of them.

Q. Are you very positive these contracts were not

(Testimony of Charles Richardson.)

made previous to any conversation or direction of any kind from the respondent company or its agents?

A. I am very positive they were not made until verbal conversations with Harrison, in which they approved of our course. Because we discussed the question particularly as to whether we should take the risk, or whether if they did not join in the contracts they would have to take the risk of loss of the whole matter of the cargo, and we might get them out some cheaper, and I wanted them to decide that question so that we would know where we were; and if the policy was to be contested it might affect the question of the removal; we wanted some assurance from them on that subject before we determined that.

Q. Where did you have the first correspondence or conversation with M. C. Harrison & Co.?

A. I would be unable to say, because it was either with Mr. Houck, in Seattle or in Tacoma, or some member of the firm in Seattle or Tacoma. We talked in Mr. Bogle's office a number of times; and they were over to see me a number of times; a great number of times, about it.

Q. Did you receive a telegram from Mr. Bryant, the manager of that company in Dawson, in the forepart of October, 1903, in response to a telegram of yours, asking what the condition of the Kerr was, etc.?

(Testimony of Charles Richardson.)

A. There were telegrams about the condition of the Kerr that passed from the time she was stranded up to the time it was definitely settled that she could not—

Q. I ask you relative to one particular telegram?

A. I got a lot of telegrams.

(Testimony of witness closed.)

Mr. F. L. DENMAN, a witness called on behalf of the libelant being duly sworn, testified as follows:

Q. (Mr. BOGLE.) State your name and place of residence.

A. F. L. Denman, Auditor Pacific Cold Storage Company; residence, Tacoma.

Q. How long have you been auditor of the Pacific Cold Storage Company?

A. For nearly five years.

Q. Do you know what cargo was shipped by the libelant company on the steamer Elishu Thompson, destined for Dawson and leaving Puget Sound on or about 30th July, 1903? A. Yes, sir.

Q. Have you copies of the invoices covering that cargo?

A. Yes, sir, these are the copies. (Producing papers.)

Q. Are these correct copies? A. Yes, sir.

(Testimony of F. L. Denman.)

Q. Do they show the invoiced value of the goods at Tacoma at the time of shipment?

A. Yes, sir.

Mr. BOGGLE.—I offer these in evidence.

Mr. BRONSON.—I object as incompetent, irrelevant and immaterial and as not the best evidence.

(Papers (7) marked Libelant's Exhibit "N," filed and returned herewith.)

Q. Were the fresh meats and poultry shown on these invoices refrigerated at the time they were shipped? A. Yes, sir.

Q. Mr. Denman, did you hear any conversation between Mr. Richardson, the president of the libelant company, M. C. Harrison or Mr. Cleverden, the agent of M. C. Harrison & Co., during the month of May, 1904, or about that time? A. I did.

Q. Relative to the payment by the defendant company of an advance on the expenses incurred by the Cold Storage Company?

Mr. BRONSON.—I object as incompetent, irrelevant and immaterial.

A. I did.

Q. State what that conversation was.

A. The conversation was concerning the stranding of the "Kerr" and Mr. Cleverden was requesting

(Testimony of F. L. Denman.)

from Mr. Richardson the policies on the steamship "Elihu Thompson" that he might take notes on the same looking toward the renewal of the insurance on the "Thompson." Mr. Richardson stated that he was not ready to do this; that he did not want to do it. That Mr. Cleverden or his company had made certain promises in regard to making a substantial advance on account of the heavy outlay that the company had been to in removing the cargo of the stranded "Kerr." Mr. Cleverden said that that would be all right, that these promises would be met. The difficulty, however, so far as their company was concerned, the difficulty lay in securing the advances from the re-insurers. Mr. Richardson stated that he did not care so much about the money that the company had spent, the company did not particularly need it, but he did want some evidence on Mr. Cleverden's part of the good faith or intent of his company.

Q. Was the arrangement to make the advance of fifteen thousand dollars, which was thereafter paid, made at that time?

MR. BRONSON.—I object as incompetent, irrelevant and immaterial.

A. The promise to make the advance was renewed at that conversation, but I am unable to state the exact amount stated in the conversation.

(Testimony of F. L. Denman.)

Q. How long, after that, before the fifteen thousand dollars was paid?

A. I should judge it was about forty-five or sixty days.

Q. Were the policies on the "Elihu Thompson" renewed with the M. C. Harrison company?

Mr. BRONSON.—I object as incompetent, irrelevant and immaterial.

A. They were. Or rather, I do not know that they were renewed with the company; the insurance was renewed and Harrison & Co. got the insurance. I think it was placed in another company, but I am not quite certain about that.

Mr. BRONSON.—I move to strike the answer as not responsive to the question.

Cross-examination.

Q. (Mr. BRONSON.) The arrangement then, as I understand you, was with Cleverden that if the M. C. Harrison Co. would agree to make this advance on account of this loss that the Pacific Cold Storage Company would give M. C. Harrison & Co., the placing of the reinsurance on the "Elihu Thompson"?

A. From the conversation I heard, I did not understand that that was contingent at all; I did not get that impression, anyhow.

(Testimony of F. L. Demman.)

Q. Well, it was the agreement that the Pacific Cold Storage Company would give M. C. Harrison & Co. the placing of the insurance on the "Elihue Thompson"?

A. I heard no agreement made in regard to the renewal of the insurance. Mr. Cleverden was asking that Harrison & Co. be given the insurance.

Q. Well, I understood you to say that the agreement was made that they would give it to them?

A. No, sir, I did not so intend, from my statement of the conversation.

Q. The insurance was given to M. C. Harrison & Co.?

A. It was given to M. C. Harrison & Company subsequently. I am quite certain that no agreement was made to give it to them in that conversation.

Q. There are some items here that are not cold storage items, are there not?

A. Yes, sir.

(Testimony of witness closed.)

At this time further hearing adjourned to be taken up by agreement of proctors.

Seattle, Washington, 2 P. M.,

Thursday, March 30, 1905.

Present: Mr. BOGGLE, for Libelant.

Mr. BRONSON, for Claimant.

Continuation of proceedings pursuant to agreement as follows, to wit:

Mr. W. B. JACKLING, recalled as a witness for and on behalf of libelant, testified:

Q. (Mr. BOGGLE.) Mr. Jackling, you have heretofore testified in this case, have you not?

A. Yes, sir.

Q. You were chief engineer on the river steamer "Robert Kerr" during the summer and fall of 1903, were you? A. Yes, sir.

Q. What kind of boilers did the steamer "Kerr" have at that time?

A. Cylindrical tubular boilers.

Q. How many boilers? A. Three.

Q. Is that a standard make of boiler?

A. Well, that is one of the standard makes, yes, sir.

Q. Are those the same boilers the "Kerr" has had since she first went into commission?

A. Yes, sir.

Q. You stated in your former testimony that the boilers leaked some on the trip up the river from St. Michael on the voyage in September, 1903.

(Testimony of William B. Jackling.)

A. Yes.

Q. What caused those leaks?

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial, on the ground that this is virtually a redirect examination of the witness and this has all been gone over in his examination in chief originally.

A. Well, the leaks came from small leaks in the tubes, about ten or twelve hours after we got into the mouth of the Yukon River, I should judge, as I remember.

Q. What space was there between the tubes in these tubular boilers?

A. What space is there between the tubes?

Q. Yes?

A. The space between the tubes on the "Robert Kerr" are about three-eighths of an inch—the bridges between the tubes are about three-eighths of an inch.

Q. Are the waters of the Yukon River clear or muddy? A. Very muddy at times.

Q. How were they on this trip in question?

A. Well, as I remember the waters were rather muddy.

Q. What is the effect upon these tubular boilers of muddy water?

(Testimony of William B. Jackling.)

A. Coat the tubes very rapidly, choke them up, fill up between the tubes and the water accumulates.

Q. Is there any way to get into the boilers and clean out these formations between the tubes?

A. Yes, sir. You can get into the boilers through a manhole place between the boilers, that is, the "Kerr's" boilers, and clean the vertical lines between the tubes, but there is no way of cleaning the horizontal spaces except by water—making an effort to clean them out by water—hose.

Q. Can that be done while the steamer is on a voyage?

A. The cleaning of the boilers?

Q. Yes.

A. We clean them out every four days.

Q. Is that the case with all steamers on the Yukon River using these tubular boilers?

A. Yes, sir.

Q. How many voyages had you made on the steamer "Robert Kerr" prior to this one in question?

A. I think I went to work for the company first in 1902, the fall of 1902; made one voyage in 1902 and one full voyage in 1903, and this last voyage.

Q. This was your third voyage on the "Kerr"?

A. Yes, sir.

Q. Third round voyage?

A. Yes, sir. I went two trips—a trip up the river last year to Dawson and then a return to Fairbanks.

(Testimony of William B. Jackling.)

Q. The "Kerr" had a barge in tow on this trip in question, did she? A. Yes, sir.

Q. What has been the average time taken by the "Kerr" on other voyages from St. Michael to Dawson carrying a barge?

Mr BRONSON.—Objected to as incompetent, irrelevant and immaterial and not proper redirect examination.

A. Previous to our trip last year the best time she had made was from twenty-six to thirty days.

Q. Do you remember the time that she made in 1902?

Mr. BRONSON.—Objected to on the same grounds.

A. I think it was twenty-six days—twenty-seven days.

Q. What day did you leave St. Michael on this trip in the fall of 1903?

A. I think it was along late in August; I think the 27th or 28th of August. I won't say for certain, but it was about that date, though.

Q. Do you remember the time that she stranded on the way up?

A. About the 21st, I should judge, of September, as near as I can remember. We were at Fort Yukon on the 20th.

(Testimony of William B. Jackling.)

Q. Was there any time lost by the vessel on this voyage in getting wood at wood yards along the river?

Mr. BRONSON.—Objected to for the same reason given above.

A. Yes; there was a great deal of time lost getting wood.

Q. How did the amount of time lost on this particular trip in that respect compare with the amount of time consumed on any other voyage in getting fuel?

A. We never had any difficulty in getting wood previous to this trip. There was always lots of wood on the river. This year, 1903, there was no wood.

Q. How did the speed made by the Kerr from St. Michael to the time she stranded on this trip, in the fall of 1903, compare with the average speed made by her on other voyages when she was carrying a tow?

Mr. BRONSON.—Objected to on the same grounds above noted.

A. Well, we made nearly about the same time that we did. We might have been two days longer getting from the mouth of the Yukon to Fort Gibbon than we were before. I think there was about that much difference.

(Testimony of William B. Jackling.)

Q. Did you lose any time at the mouth of the river getting over the bars into the river?

Mr. BRONSON.—Same objection as above.

A. We laid there on the mud flats probably from twenty-four to thirty-six hours. I don't remember which; we either stayed twenty-four or thirty-six hours there, as I remember it.

Q. What was the cause of this loss of time?

A. Well, the tide. We went into the flats and we could not get into the mouth of the river on account of the tide falling.

Q. How long would it have taken the "Kerr" to have gotten into Dawson from the point where she stranded if she had not stranded?

Mr. BRONSON.—I object to that for the same reason as above and because it calls for the conclusion of the witness and not a statement of any fact.

A. I should think four days and a half—from four to four days and a half—would have been the extreme time if there had been water enough in the river.

Q. Do you know what the draught of the "Kerr" was on this voyage?

Mr. BRONSON.—Same objection as above.

A. It was between five and six feet some place on leaving St. Michaels.

(Testimony of William B. Jackling.)

Q. How did the load that she was carrying at that time compare with the full cargo she carried on other voyages?

Mr. BRONSON.—Same objection.

A. I think we carried larger cargoes before at times. There was not a great deal of difference; there might have been fifteen or twenty tons more previous voyages.

Q. You say the boilers leaked some on the trip up?

A. Yes, sir.

Q. What was done?

A. Why, we ran them until it was necessary to wash the boilers out—until it was necessary to wash out the boilers—we ran them until it was necessary to change the water in the boilers and wash them out, and then we repaired the tubes, patched them up, and went on again. It generally takes twenty-four hours—generally takes from twenty-four hours to thirty-six hours to wash the boilers—cool the boilers down and wash them, and while we were washing the boilers and cleaning them out, why, we repaired the tubes.

Q. What was the cause of these leaks in the boilers?

A. Well, it came from the sediment that was settled between the tubes, in the vertical lines of tubes,

(Testimony of William B. Jackling.)

between the bridges or tops and bottoms of the tubes and caused by overheating partially.

Q. Does it become necessary to wash out the boilers every four days on that river whether they are leaking or not?

Mr. BRONSON.—Objected to as incompetent, irrelevant, immaterial and leading.

A. Yes, for the safety of the vessel it is necessary to wash the boilers about every four days. If you wait longer than that you are in danger of burning the boilers—destroying them.

Q. At what point do you strike the strongest current in the Yukon River between St. Michael and Dawson, or between its mouth and Dawson?

Mr. BRONSON.—Objected to for the same reasons and as improper redirect examination.

A. Well, of the Yukon currents, I think the strongest current is on part of the Yukon flats.

Q. Had the “Kerr” passed through those currents on this trip? A. Yes, sir.

Q. Under her own steam?

A. Under her own steam; yes, sir.

Q. Was it necessary to stop below those currents and accumulate a head of steam before you could go through?

Mr. BRONSON.—Same objection as above.

(Testimony of William B. Jackling.)

A. No, sir. We never had any difficulty in getting steam on the "Kerr."

Q. Did you have any difficulty at any time on the trip in getting enough steam for the propulsion of the boat? A. No, sir.

Q. What is the length of these boilers, Mr. Jackling? A. Sixteen feet extreme length.

Q. What is their diameter?

A. I think it is forty-two inches.

Q. Were those leaks in the front end or in the back end of the boilers?

A. Back end of the boilers.

Q. Would it be possible for a man standing on the outside to see the water leaking from those tubes without going inside the boiler?

A. Well we do go inside the boiler—do you mean inside the boilers? A. Yes.

A. Could not see it by going inside the boilers at all.

Q. Well, I asked you if it would be possible for a man standing on the outside to see the water leaking from these tubes without going inside the boiler.

A. You could not see the leak—if you mean the leak, the dropping of the water running from the ends of the tubes—the tube ends—down you could not see it. I think it would be impossible to see it from the front end of the boilers at all.

(Testimony of William B. Jackling.)

Q. Could a man standing on the outside tell whether these boilers were leaking or not?

A. The only way he could tell it would be by the sound of the steam. He might listen and hear the hissing noise in behind here. That is the only way he could tell.

Q. He could not see the water running out of them? A. I think it would be an impossibility.

Q. Were you the engineer on the steamer "Kerr" in the spring of 1904, when she completed her voyage from Circle up to Dawson? A. Yes, sir.

Q. Did you have any difficulty in getting through?

A. None at all.

Q. Any trouble with the boilers in finishing the trip? A. No, sir.

Q. How many trips were made by the "Kerr" during the season of 1904?

A. One full trip from Dawson to St. Michaels and return to Dawson and then one trip from Dawson to Tanana River—Chena or Fairbanks—whatever they call it.

Q. She had usually made two trips prior to that, had she? A. Yes, sir.

Q. Do you know why she made only one trip during the season of 1904?

A. Mr. Bryant, the manager at Dawson, told me—

(Testimony of William B. Jackling.)

Mr. BRONSON.—I object to any statement of the witness as to what Mr. Bryant told him as incompetent irrelevant and immaterial.

Q. Go ahead.

A. Mr. Bryant informed me that the company was sending in a great lot of stock overland and it would be unnecessary for the "Kerr" to make more than one trip.

Q. Did you overhaul the boilers during the spring of 1904?

A. Yes, sir.

Q. What work did you do on them?

A. Why, I had all the tubes taken out of the boilers and the ends cut off and six inches welded on the end of each tube and the tubes thoroughly cleaned, scraped and put back in the boilers.

Q. Did you do any work on the firebox and on the engine?

A. Done work on the boiler part of the boilers or firebox. The firebox is made out of bricks and the fire is under these boilers and one of the boilers, there was a poke or bulge in the boiler and the boilermakers had that heated and forced that back up and straightened the back of the boilers—that had been there for two or three years—and also changed the valve gear on the main engines.

Q. What was the purpose of those changes?

(Testimony of William B. Jackling.)

A. The purpose of the changes was for economy—saving of fuel.

Q. How often do you overhaul the boilers and machinery of these river steamers on the Yukon River?

Mr. BRONSON.—I object to all this class of examination as incompetent, irrelevant and immaterial and not proper redirect.

A. The overhauling ought to be done and is done about every two years—thorough overhauling.

Q. Was 1904 the regular time for overhauling the “Kerr’s” boilers and machinery?

Mr. BRONSON.—Same objection as above and because the question is leading.

A. Yes, sir. They had been retubed about two years before that—the boilers had.

Q. What is the average life of a tube on the Yukon River?

A. The way they run there about two seasons with that style of boiler, a tubular boiler.

Cross-examination.

Q. (Mr. BRONSON.) You say the average life of a tube is about two years on the Yukon River?

A. Yes, in the style of boiler in the “Kerr” and those boats that gets thoroughly fired—tubular boilers.

(Testimony of William B. Jackling.)

Q. You said you overhauled the boilers in the spring of 1904? A. Yes, sir.

Q. That is before she went into commission that year?

A. No, sir. We took her from Circle City to Dawson.

Q. You had to take her up there to get the repairs done, did you not?

A. Well, yes; not necessarily we did not; we could have run her for the season the way she was.

Q. Well, I say you had to take her up there to get the repairs done; you could not do this repairing down at Circle?

A. Well, there was no reason why we could not.

Q. Just answer the question, Mr. Jackling. Could you do it down there? A. Yes, sir.

Q. You could? A. Yes, sir.

Q. You were in the boat during the winter, were you? Did you winter on her? A. No, sir.

Q. When you took her up to Dawson you took all these tubes out and cut off about six inches, about that much, and welded on new ends?

A. Yes, sir.

Q. As a matter of fact, what happened to those tubes is this, is it not: When they begin to leak, boilers of this kind, you roll out the ends of the tubes in order to make them long enough, in order to weld

(Testimony of William B. Jackling.)

the ends into the front or back of the boiler; is not that it? A. Well, if the tubes—

Q. When you ordinarily repair them—I am not talking about what you did up at Dawson, but when you repair them temporarily that is what you do, is it not?

A. Expand the tubes in the boiler sheet, yes, sir.

Q. Which makes the tubes thinner?

A. Yes, sir.

Q. That is, very excessive rolling makes the tubes thinner? A. Yes, sir.

A. And weakens them? A. Well—

Q. Weakens the iron?

A. Well, a capable man—

Q. Just answer the question Mr. Jackling, and explain afterwards. Does it not make the iron thinner?

A. Well, just wait a minute before I answer this question. I can't answer that question because it would only garble the statement up.

Q. You can explain afterwards; you can say yes or no, if it makes the tube thinner, and then you can explain your answer.

A. I might say yes; in one sense it would be right and another sense it would not.

Q. You can answer Mr. Jackling.

A. Well, I say yes. Now, I will explain that.

(Testimony of William B. Jackling.)

Q. Go on and explain it.

A. Well in rolling a tube a capable man would take the tools, a beading tool and a hammer and calking tool for calking tubes with, and drive the tube back, upset it back, and then take his expander and expand it, and the tube will remain the same thickness. But if he expands the tube without adding that way, it makes the tube thin. You can't expand a tube and cut it off the same as you can anything else without you upset it again by driving it back again by a beading tool.

Q. The failure of the tube is owing to the wearing off of some of the iron, is it not and making a hole or making an opening of some kind in the tube, or in its connection? A. In a curve—

Q. Is not that true?

A. Not necessarily you don't have to have a hole in the tube, Mr. Bronson.

Q. Well, it is a hole in the tube or in the connection of the tube?

A. It makes the tube smaller. A tube expands with the heat and then contracts with cold and water comes out around the edges of it between the boiler sheet and the tube.

Q. Why is it you ultimately have to cut off some of the tube and weld some more on if you have not parted with any of the tube?

(Testimony of William B. Jackling.)

A. Well, the reason in doing that on the "Kerr" was because of taking the tubes out of the boiler to clean them. We cut off the ends of the tubes in order to get them out of the boiler sheet and therefore the tube was shorter by half an inch, and in taking the tubes out of the boiler they split the tube for a quarter of an inch and sometimes three inches to bring the ends together to get the tube out through the hole.

Q. How long had the tubes been in the "Kerr"?

A. About two years.

Q. Well, how long exactly had they been in the "Kerr"?

A. Well, I could not say exactly, Mr. Bronson.

Q. How long had you been in the "Kerr"?

A. I went on the "Kerr" in 1902.

Q. What time in 1902?

A. I think some time in July.

Q. Were these tubes in the "Kerr" then?

A. Yes, sir.

Q. By what you said about the repairs which you made at Dawson that spring to the boilers did you mean for the court to understand that the repairs which you made to the boilers was for the purpose of saving fuel? A. Yes, sir.

Q. And for no other purpose?

A. No, I think not for any other purpose.

(Testimony of William B. Jackling.)

Q. How does it save fuel?

A. Well, by cleaning the tubes, this coating of dirt and scale that coats over the tube makes the tube thicker and the fire and heat passes through and don't heat the water rapidly enough, or as rapidly as a clean tube; so we took the tubes out and scaled them—the scale gets very hard and flinty on the sides of the tube—and we took them out to clean the tubes and clean all that scale off.

Q. How often do you clean that off?

A. Well, it ought to be done, as I say, about every two years. Tubes ought to be taken out of that kind of a boiler every two years or oftener if it could be possibly done.

Q. I understood you to say that it takes about twenty-four hours to wash the boilers?

A. It did on the "Kerr," from twenty-four—from twenty to twenty-six hours sometimes.

Q. And you do that every four days?

A. About every four days, yes, sir.

Q. And it takes pretty near a month to get from St. Michael to Dawson?

A. Does the "Kerr." It took her—

Q. So you would clean the boilers about seven times during that trip?

A. About that; yes, sir.

Q. Do you call that lost time ordinarily?

(Testimony of William B. Jackling.)

A. Yes, sir.

Q. You do not mean to say it takes ordinarily about thirty days to make the trip from St. Michael to Dawson, straight running—you include in that all your stops?

A. All our stops, yes, sir.

Q. And you don't call that lost time any more one trip than another, I suppose?

A. No; I don't know—

Q. You would not speak of it as lost time this trip and not lost time next trip?

A. No, sir; taking the trip as a whole.

Q. The "Kerr" was hogged, was she not?

A. Hogged? No; if she was I never knew it.

Q. You never heard of that? A. No, sir.

Q. You were on her two years?

A. Two years.

Q. Never heard of her being hogged?

A. No.

Q. She did not leak any so you could see steam coming out? A. No, sir.

Q. In whose employ are you now, Mr. Jackling?

A. In the Pacific Cold Storage Company's employ.

Redirect Examination.

Q. (Mr. BOGLE.) You have been employed by the Pacific Cold Storage Company for this season since the time you testified before, have you not?

(Testimony of W. H. Bogle.)

A. Yes, sir.

(Testimony of witness closed.)

Thereupon further proceedings were continued to some date to be hereafter agreed upon by proctors for the respective parties.

Seattle, Washington, March 15, 1906.

Continuation of proceedings pursuant to agreement.

Present: Mr. BOGLE, for the Libelant.

Mr. BRONSON, for the Respondent.

W. H. BOGLE, a witness on behalf of the libelant, being duly sworn, testified as follows:

(Statement.) In November, 1903, I was the attorney and vice-president of the Pacific Cold Storage Company, and had familiarized myself with the reports that had been received by the company as to the condition of the steamer "Robert Kerr" at that time. On the 7th or 8th of November, Mr. M. C. Harrison, the president of M. C. Harrison & Co., came into my office with Mr. J. A. Houck, who was the Seattle representative of M. C. Harrison & Co. At the time Mr. Harrison informed me that the principal object of his visit to Seattle was to get some adjustment or come to some conclusion about the "Kerr." I gave him all the information I had as to the status of the "Kerr" and the cargo at that time, and suggested that the cargo should be moved

(Testimony of W. H. Bogle.)

to Dawson. Mr. Harrison requested me to send a telegram to the manager of the Pacific Cold Storage Company at Dawson, to get information as to the condition and location of the "Kerr" and the quantity of cargo that was on the "Kerr"; and the condition and location of the steamer "Lightning" and the cargo that was on the "Lightning," and he and I formed a telegram, which I sent. An answer was received on November 9th. That answer has been filed as one of the exhibits in this case. The telegram sent by me and which has been framed by Harrison and myself in my office and which was dated either the 7th or 8th of November, 1903, has also heretofore been filed as an exhibit in this case. In the course of the conversation with Mr. Harrison at that time, the question of the advisability of moving the cargo to Dawson during the winter, overland, and the probate expense of such removal, was discussed. Also the question whether the Pacific Cold Storage Company would abandon the cargo to the underwriter. Mr. Harrison first stated that he did not think there was any ground for abandonment; stated that he hoped that the company would not take that course; that it would probably result in the underwriters moving the cargo to Dawson and entering into competition with the company in the sale of meats, and that they did not want to do that,

(Testimony of W. H. Bogle.)

as that was the business of the Cold Storage Company; that the Cold Storage Company was more familiar with conditions in that country and had better facilities for disposing of the cargo than the insurance company would have. Mr. Harrison made a trip then to Vancouver, returning on either the 9th or 10th of November, at which time I showed him the answer that had been received from Mr. Bryant, the agent at Dawson. Either Mr. Harrison or Mr. Houck, his agent, told me that he had made inquiries at Vancouver, through the representatives of the White Pass and Yukon road, as to the expense of moving his cargo, and that his opinion was that it could probably be moved a little bit cheaper than at the rates mentioned by Mr. Bryant in his telegram.

MR. BRONSON.—I desire to enter an objection to evidence as to what Mr. Houck or any other person may have said, or any opinion which they may have expressed, on the ground that the same is hearsay, incompetent, irrelevant and immaterial.

A. (Continuing.) I discussed with Mr. Harrison at that time the advisability of moving the cargo, in order to avoid a total loss. At the conclusion of the discussion of that subject Mr. Harrison said that the Cold Storage Company was more familiar with the conditions in that country than he was, and for that company to take such steps or such action as

(Testimony of W. H. Bogle.)

they deemed necessary and proper for the safety of the cargo and that that would be satisfactory to him. I told him that the expense of moving the cargo would be very heavy, and asked if the Insurance Company would advance the money to cover this expense. He said that it was not customary for the insurance companies in such cases to advance any money until the vouchers were all gathered in, and the total loss or expenses ascertain and adjusted, but that under the circumstances of this case, he recognized that it would be a hardship to the Cold Storage Company to have to advance so large a sum of money, and that he would endeavor to get the underwriters to make an advance of twenty-five thousand dollars for that purpose, I stated that the cargo was approximately 200 tons, and that it was apparent that the expense would be a great deal more than twenty-five thousand dollars. He said that he realized that, but that if the underwriters advanced twenty-five thousand dollars, that by the time that amount had been expended, some of the cargo would have reached Dawson and would probably be disposed of by the company and that the company could use the proceeds for defraying the expenses of removing the balance; and, that at any rate after the twenty-five thousand dollars was expended, if an additional advance was found to be necessary it

(Testimony of W. H. Bogle.)

could be then taken up with the underwriters. Mr. Harrison explained at the same time, however, that the St. Paul Fire and Marine Insurance Company had reinsured a large part of this risk, and that most of the reinsurers were in London, and that it would be necessary for him to consult with these reinsurers before any advance could be made. And he told me that as soon as he returned to San Francisco he would take the matter up formally with them. In the course of this discussion in discussing the amount of the expenses; and in response to my statement to Mr. Harrison that the underwriters should put up all the expenses because their interest was much larger than the Company's, Mr. Harrison said that he was inclined to think the underwriters would dispute the basis of apportioning the expenses that I had in mind; that he thought that they would take the position that their proportion of the expenses of removing the goods would be based on the destination or Dawson value of the cargo, instead of the invoice or prime cost, which was the basis upon which I estimated the expenses. So far as I recollect, that was the only point of difference between Mr. Harrison and myself on the question of liability of the underwriters for these expenses. Subsequently, sometime in December, Mr. Harrison wrote a letter to the company, a copy of which I here-

(Testimony of W. H. Bogle.)

with hand to the Commissioner to be made an exhibit to this testimony.

(Paper marked Libelant's Exhibit "O," filed and returned herewith.)

In that letter Mr. Harrison states that this proposition of his to advance twenty-five thousand dollars, was made specifically without prejudice. I do not recollect, and feel confident, that there was no mention made by either Mr. Harrison or myself, as to the effect that his proposition would or would not have upon the general question of the liability of the company. The discussion brought forth no denial from Mr. Harrison of liability, although there was no specific admission of any. The only remark, so far as I recollect, with reference to the liability of the company was the statement of Mr. Harrison that the company was under no liability to make any advance upon the loss or to cover expenses prior to the adjustment of the loss, after the entire loss or expense was ascertained. The question of an advance by the Insurance Company upon the expense of removal of the goods was kept under negotiation and consideration until sometime during the next spring, when the advance of fifteen thousand dollars was made. When the question of an adjuster was under consideration, Mr. Harrison suggested, on several occasions, that we should appoint a Mr.

(Testimony of W. H. Bogle.)

Bishop, of San Francisco to adjust this loss. After making some inquiries about Mr. Bishop and ascertaining that he had previously been associated with Mr. Harrison in business, we declined to appoint him. Mr. Harrison thereupon suggested that he would be satisfied with Mr. Le Bartoux, of Johnson & Higgins, of San Francisco; and I agreed upon behalf of the company to appoint him as adjuster, but when the appointment was tendered to him he declined to act. Mr. Harrison in a letter, under date of May 6th, 1904, had announced that they would not consent to the appointment of either Mr. Isted or Mr. Milligan, and suggested that some eastern man might be selected. The letter to which I refer is dated May 6th, 1904, and I hereby file the same as an exhibit to this testimony.

(Paper marked Libelant's Exhibit "P," filed and returned herewith.)

I was not willing to incur the delay that would result from the selection of some eastern man, and after making inquiries, I ascertained that Mr. E. A. Alexander, of San Francisco, was a capable adjuster, and I saw Mr. Harrison and asked him whether Mr. Alexander would be satisfactory to him, and he said he would. The Cold Storage Company thereupon asked Mr. Alexander to adjust the loss, and turned over all of the papers to him for that

(Testimony of W. H. Bogle.)

purpose. Mr. Alexander's office is on the same street in San Francisco, and just across the street from the office of Mr. Harrison. After Mr. Alexander had finished his adjustment, I went to San Francisco and procured from him all of the vouchers and documents, and a copy of the adjustment and went over to Mr. Harrison's office; told him what papers I had, and that I would be glad to have him make any examination of the vouchers and of the adjustment that he desired, and he asked me to take the matter up with Mr. R. B. Hooper, who was then in his office. I carried the papers to Mr. Hooper and he said that it was not necessary for him to make any further examination of them, as he had been shown all of these papers by Mr. Alexander, and he thought he had been over all of them with Mr. Alexander. At the same time I served Mr. Harrison with a copy of the adjustment and the certificate of the adjuster, showing the amount found to be due by him.

Cross-examination.

Q. (By Mr. BRONSON.) It is true, is it not, Mr. Bogle, that Mr. Alexander, in arriving at his conclusion in this adjustment matter, based it entirely upon the theory that the respondent in this case was bound by the transactions which had taken place in the matter of the advancements made and the correspondence filed in this case?

(Testimony of W. H. Bogle.)

A. I do not think so. I can state, if counsel desires me to do it, the views that were expressed to me by Mr. Alexander at the time he delivered to me his final report as adjuster.

Q. No, we would not ask for his statements in that respect. I will put the question this way: Was the loss in this case adjusted by him regardless of the advancement made and the correspondence attending the same?

A. I so understood from Mr. Alexander, with this qualification: His view as he expressed it to me was that the respondent was liable under the sue and labor clause for these expenses, regardless of that correspondence, and also that the attitude taken by the respondent as shown by its correspondence would have justified the Cold Storage Company in acting on that as an admission of the necessity of moving the goods and the respondent's liability.

Q. In other words, he arrived at his conclusion upon the theory that the libelant in this case was entitled under the policy to move the goods upon what is known as the sue and labor clause, together with correspondence which has been filed in this case and the advancement?

A. His view was, as expressed to me, that there was an—that the goods were in an apparent perilous position and that the insured was justified in remov-

(Testimony of W. H. Bogle.)

ing them under the sue and labor clause; and his view was further that in as much as the peril to which the goods were exposed was one in Alaska and the information in regard to the same was communicated to the underwriters, that their correspondence showed an acquiescence by them in the view that it was judicious and wise to move them. In other words, I understood Mr. Alexander's opinion to be that the underwriters were liable upon both grounds.

Q. The information that he had relative to the perilous condition of the goods was the correspondence which has been filed in this case; or was it extraneous correspondence or information in addition thereto furnished by the libelant or its agents?

A. The correspondence was furnished to Mr. Alexander and in addition thereto other evidence in the nature of affidavits.

Q. Affidavits furnished by the libelant or its agents in this case? A. Yes, sir.

Q. At what time of the year was that?

A. My recollection is that it was in either June or July or August, 1904; but the date of Mr. Alexander's adjustment will show.

Q. There was no evidence furnished to Mr. Alexander on behalf of the respondent in this case, relative to the peril of the goods, was there, previous to his adjustment?

(Testimony of W. H. Bogle.)

A. I cannot answer that of my own knowledge.

Q. Do you know whether he gave the respondent any notice to furnish any such evidence?

A. I understood that he gave the respondent, or Harrison & Company notice, and requested them to furnish any information or facts desired and that Mr. Harrison declined to do so. That is only information, however, I was not present.

Q. You know, don't you, Mr. Bogle, that Mr. Harrison declined to submit to Mr. Alexander the question of liability under the sue and labor clause, for adjustment, and that he contended that Mr. Alexander had no authority as an adjuster to assume to pass upon the legal rights under the sue and labor clause?

A. Mr. Harrison never refused to submit that or any other question to Mr. Alexander, so far as I know or believe until after Mr. Alexander had had the adjustment in his hands and had indicated what the result would be. When Mr. Alexander finished his adjustment, I went to San Francisco and he told me and so did Mr. Harrison at that time, that Mr. Harrison objected to his using the correspondence that had passed between Harrison & Co., and the libelant as their evidence or having any effect whatever upon his adjustment; up to that time I never had heard of any objection or restriction by Mr. Har-

(Testimony of W. H. Bogle.)

risson. After I had served Mr. Harrison with the certificate of the adjuster showing the amount he found to be due from the respondent, and demanded payment in accordance with the terms of the policy, Mr. Harrison refused payment and said that he was not bound on the question of legal liability by the adjuster's adjustment. I called his attention at that time to the clause in his policy which I thought bound him by the finding of the adjuster; and he then said that he had never consented to submit the question of liability to the adjuster. That was the first time, so far as I knew, that the question had ever been raised. The adjustment was made simply by referring the matter to Mr. Alexander, who had been selected by me and agreed to by Mr. Harrison. No further instructions were given than to submit the papers to him for adjustment as a marine adjuster.

Q. You know, do you not, that in the fall of 1903 and winter of 1903 and 1904 and early spring, the respondent herein had to rely for any information or knowledge relative to the condition of affairs at the "Robert Kerr" and the cargo there, upon the libelant herein and its various officers and agents?

A. I think the respondent did rely upon the information furnished by the libelant and its agents,

(Testimony of W. H. Bogle.)

but of course the respondent could have gotten its own information as readily as did the libelant, if it had employed somebody at Dawson to get the information for it.

Q. The respondent was not informed by the libelant with regard to the condition of the "Robert Kerr" as to her boilers or as to the condition of her cargo or the location of the vessel, except as in the correspondence that has been filed in this case, has it?

A. I think it was. My opinion is that all telegrams or letters received by the libelant after the disaster to the "Kerr," was immediately communicated to the respondent either by sending a copy or by delivering to Mr. Houck who was the local agent of Harrison & Co. in Seattle. I do not think that the exhibits that are on file in this case cover any of these reports prior to the telegram of November 8th or 9th.

Q. Was any reference made in any of this correspondence to the condition of the boilers of the "Kerr"?

A. I do not think so. There was never any reference to the boilers in any communication that passed through my hands and I never heard any question of the boilers in connection with the matter until it was set up in the answer in this case, so far as I now remember.

(Testimony of W. H. Bogle.)

Q. The presence of the cargo on the "Robert Kerr," when she was laid up for the winter of 1903, was considered as rendering it impossible to haul her out, was it not?

A. I do not know that I could give you an answer to that question. All that I know of the matter is what has been told me by other people, and in the main is what has appeared in the testimony in this case. I can only say, if counsel desires me to, what impression I had at the time of these negotiations with Mr. Harrison, from the information that had been given to me by various people up to that time. But I have never been below Dawson on the Yukon River, and I do not know anything about the conditions there.

Q. Well, was not that the idea or impression which you had as one of the officers of the company that the "Kerr" could not be taken out of the river on ways or on any other means with this cargo on board?

A. I did have the impression that she could not be taken out with the cargo aboard. My recollection is that I had the impression then, also, that she could not be taken out without the cargo, but I am speaking now of my impressions over two years ago, and I do not want to speak positively on that subject. I want to say this, further in answer to the question:

(Testimony of W. H. Bogle.)

The impression that I had at the time was that the removing of the cargo did not tend to the safety of the steamer; it was removed for its own safety and not that of the steamer.

Q. Was not it considered, when the steamer was deemed to be in some peril upon the breaking up in the spring, that the presence of the cargo on board would very largely increase the hazard?

A. I do not think so. I do remember, however, that there was some suggestion offered from source that came to me, but I am not able to state now from whom I got it, that if the cargo was out of the vessel she would be lightened to an extent that she might be moved into shallower water where the danger would not be so great of being caught in the ice on the break-up.

Q. Is it not your recollection that a number of the witnesses in this case for the libelant testified that the vessel could not be moved with the cargo in her?

A. You mean moved on shore?

Q. Moved on shore or into the safer place?

A. I think they testified she could not be moved and put on shore.

Q. The "Robert Kerr" was owned by the libelant in this case? A. Yes, sir.

Q. In adjusting this loss, no account was taken by Mr. Alexander of any supposed benefit to the

(Testimony of W. H. Bogle.)

“Robert Kerr” or of any contribution by her to the expense of moving the cargo?

A. Some of the expenses were treated by Mr. Alexander as general average expenses.

Q. Not, however, such as involved the renewal of the cargo?

A. No. Mr. Alexander treated all the expenses of moving the cargo to Dawson overland as chargeable against the cargo alone.

Q. So that really the matter of the cost of moving this cargo to Dawson was treated by Mr. Alexander as a charge incurred under the sue and labor clause, and, as you have testified, supported or confirmed—whatever phrase might be used—by the correspondence between Mr. Harrison and the libelant in this case?

A. I understand Mr. Alexander’s adjustment to treat all expenses incurred in moving the cargo as chargeable to the cargo alone. The question of the correspondence to which you refer, had no relation, so far as I know, to the question whether these charges were under the sue and labor clause and chargeable to the cargo alone or whether they were general average expense and chargeable to both the cargo and the ship. Mr. Alexander, however, treated all expenses incurred with respect to the cargo after

(Testimony of W. H. Bogle.)

it was separate from the ship as sue and labor or particular average charges against the cargo alone.

Mr. BRONSON.—I do not want to force Mr. Bogle to answer the question if he thinks it is not susceptible of a fair answer of yes or no, but it seems to me that question, if I have understood his previous testimony, is capable of an answer either yes or no. Perhaps it might be proper to make an explanation, but I think the question draws the necessary information or conclusion in itself, and I would like to have it repeated to the witness and see if he cannot answer it that way.

(Question read to witness.)

A. As to the first part of the question I would say yes. I do not quite understand the latter part of the question, as I do not think the correspondence deals with the question of whether these expenses are sue and labor expenses or general average expenses.

Q. Did not Mr. Alexander state, Mr. Bogle, that he considered that Mr. Harrison was estopped by the correspondence which has been filed in this case, from disputing the liability of the respondent to pay these transportation charges under the sue and labor clause, or words to that effect?

A. Yes, sir. He stated in substance, that he regarded the correspondence as an admission by Mr. Harrison of the peril and of the wisdom of moving

(Testimony of W. H. Bogle.)

the goods in order to save them. I do not think he ever used the term "estoppel," but I think he did treat them as an admission of the necessity or advisability of moving the goods, and of the company's liability for the expenses thereof. I do not think he ever expressed to me the view that the correspondence threw any light upon the question of whether it was a sue and labor charge or general average charge. I will state further, to make that fuller as to what he did say, if you want me to. I remember that he did state that one of the letters from Mr. Harrison, which discusses the question of the proportion of the expense for which the underwriters were liable, was an admission, as he regarded it, of their liability, leaving open the question as to what proportion of the expense they were liable for; and in his judgment their liability was on the sue and labor clause.

Q. Then, in reality, having fixed all of the costs of transporting the goods upon the respondent, there was no general average involved in the case at all?

A. There was no general average involved in the expense of moving the goods; there was a general average as to certain expenses incurred before the goods were separate from the steamer.

Q. In the matter of sending a steamer to assist

(Testimony of W. H. Bogle.)

the "Kerr" in getting off the bar, and some incidentals thereto?

A. Yes, and as I recollect, some other charges besides that instance of sending the steamer.

Q. All of these, however, were previous to the time the goods were separate from the steamer?

A. Yes, that were incurred previous.

Q. They were in the amounts set forth in the copy of that adjustment which you have filed in this case?

A. Yes, sir.

Q. And were something less than five thousand dollars, were they not?

A. I have not the figures before me; I would not like to say; the adjustment itself shows what they were.

Q. The respondent in this case caused an adjustment to be struck of what it contended to be the general average charges in this loss, did it not?

A. I do not know. They have never shown me any adjustment nor have they ever had the papers in my possession to make an adjustment; but Mr. Hooper, to whom I referred, did tell me when I offered or tendered the papers to him, that at the request of Mr. Harrison, he had made up an adjustment, and said that when he finished it he would furnish me with a copy, but it was never furnished.

(Testimony of W. H. Bogle.)

MR. BOGLE.—I neglected to state, that during the fall of 1903 and spring of 1904, as fast as the vouchers or statements of expenses were received from the Dawson office, a copy of the statement showing the expenses from time to time was furnished the respondent.

It is stipulated between the parties hereto that a copy of the pilot-house log-book of the steamer "Robert Kerr," beginning July 1st, 1903, and ending October 4th, 1903, may be received in evidence in this case, with the same force and effect as the original log-book.

Also that a copy of the engine-room log-book covering the same dates, may be received under the same agreement.

(Papers marked respectively Libelant's Exhibits "Q" and "R," filed and returned herewith.)

Testimony closed.

RESPONDENT'S TESTIMONY.

February 20th, 1905, 3 P. M.

Hearing resumed pursuant to adjournment.

JOHN STACK, a witness produced on behalf of the respondent, being first duly sworn, testified as follows:

Q. (Mr. BRONSON.) Mr. Stack, were you employed on the steamer "Robert Kerr" in the fall of 1903? A. Yes, sir.

Q. On her last trip from St. Michaels to Dawson, or as far in as she got? A. Yes, sir; I was.

Q. In what capacity? A. As fireman.

Q. Were you familiar with the condition of her boilers as far as outward appearances would indicate? A. Well, yes.

Q. What was the condition of those boilers as to their being sound and seaworthy, or otherwise?

A. Well, the boilers was leaking when we got down to St. Michaels, and they attempted to fix them there, but they didn't do much on them—they didn't do no good.

Q. What was their condition—you say they were leaking going down; were they leaking a little, considerably, or what?

A. Well, they leaked considerable coming down.

Q. Did they repair them so that they didn't leak any going up?

(Testimony of John Stack.)

A. No; they leaked before they was out 12 hours—started to leak.

Q. What did they do to them at St. Michaels, and who did it?

A. Well, there was a boiler maker there—I didn't know him, or know his name—and all that he did just was simply—he done a little calking and expanded them—expanded the tubes.

Q. In which of the boilers?

A. In the back end of the three boilers.

Q. Did he stop up the leaks entirely?

A. Well, he did not.

Q. Do you know whether any—whether a cold water pressure was put on the boilers or not?

A. No; they wasn't.

Q. Well, you say they leaked before you were 12 hours out. What was the extent of the leak? Just give the Court an idea, as near as you can, what you would call the extent of the leak.

A. Well, they leaked after we was out a few days—they leaked so bad we had to tie up and fix them

Q. Do you know how many times you stopped to fix them?

A. Well, to my knowledge, I am sure we stopped three times to fix the boilers.

Q. How many hours or days would you be stopped, or were you stopped, to repair them?

(Testimony of John Stack.)

A. Well, we fixed the boilers, and to cool her down, and everything—whatever time we would stop, it would be close onto a day.

Q. What effect did the condition of the tubes have upon her ability to hold steam?

A. They leaked so bad it stopped the draft—everything like that.

Q. Well, what effect would that have on the steam pressure? We want the evidence here to be so that the Court can understand it—not what you understand and I understand, but explain it so that the Court can understand what effect that would have on the steam of the boiler?

A. Well, it would this much effect: That—well, I couldn't explain it any other way; if you ain't got the draft to it, you can't get the steam.

Q. What would the normal pressure in her boilers—what she was accustomed to carry in her boilers?

A. Well, she was supposed to carry about 135 to 140 pounds—along in there.

Q. Do you know what—about what pressure she could carry when she was—well, when the tubes were in as good condition as you had them at any time going up—how much pressure could she carry on that trip?

A. Well, she could carry 130 or 135 pounds.

(Testimony of John Stack.)

Q. And when they were leaking badly, what would she carry?

A. Well, she couldn't carry but perhaps a hundred or a hundred and ten pounds—something like that amount.

Q. What effect did that have on the speed of it?

A. Well, it would be considerable.

Q. In what way? Tell how it would affect the speed; increase it, or decrease it.

A. It would decrease it.

Q. Do you know when the steamer "Light" left St. Michaels? A. Yes, sir.

Q. When, relative to the time the "Robert Kerr" left, I mean?

A. Well, she left there a few hours before the "Kerr" left.

Q. Just a few hours before the "Kerr" left?

A. Yes, sir.

Q. Do you know whether or not she is a sister boat of the "Kerr"?

A. She was supposed to be a sister boat—yes.

Q. Do you know how much cargo she had on her?

A. Well, no; I do not—just exactly.

Q. Well, no; I do not—just exactly.

A. Yes; I know she had a scow in tow, and towed that scow with her, which was full.

(Testimony of John Stack.)

Q. Do you know whether she had more, or less, cargo than the "Kerr"?

A. She had more, I believe.

Q. She had more cargo? A. Yes, sir.

Q. Do you know whether she got through to Dawson or not?

A. Yes, sir; I know she got through to Dawson.

Q. That fall? A. Yes, sir, that fall.

Q. Did any accident happen to the "Kerr's" ground tackle or anchors or anything like that, during the trip up?

A. They had lost an anchor and, I guess, a thousand feet of cable.

Q. What was the occasion for losing that—how did it happen?

A. Well, that was in the wood boat, and we was fixing the boilers and they went to lower the boat down to another wood pile, about perhaps 150 feet, or something like that, and the boat got away from them, and they threw this anchor overboard, and made the cable fast, and the whole thing went overboard, and they never got it at all—left it right there.

Q. Did she have steam at that time?

A. No, sir.

(Testimony of John Stack.)

Q. Why not? How did it happen she didn't have any steam?

A. Well, we was fixing the tubes and washing the boilers, and just put the fire under the boiler, and there was cold water in the boiler, and when we put the fire in, it took several hours for to get steam up?

Q. What was that cable and anchor used for on that boat?

A. Well, it was used for to move us if the boat would get aground, to pull it off, or the scow got on the ground, to haul her off.

Q. Was the anchor ever fixed up again?

A. Not to my knowledge, no, sir,—it wasn't that fall, I know.

Q. If those boiler tubes had been thoroughly repaired, or they had been in good condition at St. Michaels, would they have sprung any such leak as they did going up? A. No—no; they couldn't.

Q. How many seasons have you been in the Yukon country?

A. I was in there seven years.

Q. Have you ever see the break-up of the ice in river? A. Yes, sir.

Q. Do you know where the "Kerr" was wintered?

A. Yes, sir.

Q. Do you whether or not that is considered to be an ordinarily safe place for a boat to be wintered?

(Testimony of John Stack.)

A. It always was—yes.

Q. Do you know whether boats have been wintered there or not?

A. Yes, sir; boats have been wintered there.

Q. How would that particular place compare with ordinary places or the ordinary sloughs of that character on the Yukon River as to safety for wintering?

A. Well, they have always called it a safe place—that is, steamboat men would always say it was a safe place for a boat to put in for winter quarters.

Q. What is the usual course of the ice in the break-up of the river in the spring, where there is a jam of any kind; just explain what occurs?

A. Well, the ice will break up, and my experience in the country, the river breaks up at the head of a river—breaks up first, and keeps crowding the ice down, and the ice will jam up and back water up—back ice and water up—leaves it up sometimes 20 feet above high water, on the banks.

Q. Well, how does it—just what is the process of piling up the ice; how does the river do it?

A. Well, it backs up the water, and then when it gets a certain height, why then she forces the jam out.

Q. Well, does this ice—what I am getting at is, does this ice pile up as a mass, suddenly, or is it formed gradually?

A. Well, it forms gradually.

(Testimony of John Stack.)

Q. And how does it do it? What is the action of the river in piling it up? How is it done?

A. The ice stops and jams.

Q. Now, the ice that comes down does what; piles on top, goes underneath, or what?

A. Piles on top, and keeps backing up—keeps on piling up there, until it gets a big solid mass of broken-up ice.

Q. Now, in going out in the spring, does that mass of ice go to places instantly, or does it gradually subside?
A. Well it scatters out.

Q. Scatters out?

A. Scatters out. After it strikes the main channels, it scatters out, when it goes, until that strikes another jam, and jams up.

Q. Where do vessels that are navigating on the Yukon River spend the winters, ordinarily?

A. They spend it right in the ice—sloughs and different places.

Q. That is the usual place for them to stop, isn't it—in the ice?

A. Yes, sir. Sometimes they pull a boat out, if it needs repairing, or something like that.

Q. Did you ever know of a vessel to be completely wrecked in the Yukon?

A. No, sir—not by ice that way; I have seen them on the bars get broke up in the summer-time.

(Testimony of John Stack.)

Q. In the summer?

A. In the summer-time—they get onto a bar.

Q. Do you remember whether or not the vessel was laid up at Androfski? Do you remember it by that name?

A. I remember the name—I am just trying to think now. I believe we was located at Androfski.

Q. Do you remember how long?

A. No, I do not.

Q. Could you say how many days altogether the “Kerr” was laid up, including the time you would be lowering steam for you to get the tubes repaired or patched up, getting the fire up again, and so forth and so on—make an estimate in time, as to how long—about how many days?

A. Well, we was laid up between three and four days—I am sure of that.

Q. Do you know whether or not the steamer “Light” had a barge in tow?

A. She had a barge in tow when she left St. Michaels; yes, sir.

Q. Do you know who built the “Light?”

A. I believe the Moran Brothers built it.

Q. Who built the “Kerr”?

A. Moran Brothers did.

Q. Was there any attempt made to move the

(Testimony of John Stack.)

“Kerr” from the place where she was put up for winter quarters at Circle? A. No, sir.

Q. Was it possible to move her or take her elsewhere at that time?

A. Well, she—her boilers leaked bad.

Q. Otherwise than as to the condition of her boilers, was there anything the matter with the navigation of the river at that time?

A. No, sir. There was just a little ice running in the river—just started in then.

Q. Where did you go from there?

A. Where did I go?

Q. Yes, sir; when did you leave Circle?

A. I went last on the “Lightning.”

Q. She went on up the river?

A. She went on up the river.

Q. Are there other places for winter quarters around Circle City?

A. Well, yes, I believe there are—different places for winter quarters there. Of course I was a fireman—I ain’t acquainted with the river like pilots.

Q. Well, do you know whether other boats wintered any other places around there?

A. Yes; there is boats wintered all the way along there in different places.

Mr. BRONSON.—That is all.

(Testimony of John Stack.)

Cross-examination.

Q. (Mr. BOGGLE.) You say you have been in the Yukon country several years? A. Yes, sir.

Q. What have you been doing up there?

A. I have been mining and steamboating.

Q. On what boats have you worked?

A. I have worked on the "Kerr" and the "Leah," and I worked on the "Tanana" awhile this summer.

Q. How long did you work on the "Kerr"?

A. I worked on her from the time we got into St. Michaels, when she went down the river, until she got into her winter quarters at Circle City.

Q. That is on the last voyage from St. Michaels up to Circle City, was it?

A. Yes, sir.

Q. When did you work on the "Leah"?

A. I worked on her last summer, 1904.

Q. In what capacity?

A. I was deck-hand on her.

Q. Deck-hand on her, and you were fireman on the "Kerr"? A. Yes.

Q. Now did you ever work on any other boats?

A. No, sir. I worked on the Tanana—came down on the Tanana last—

Q. In the summer of 1904?

A. Yes, sir.

Q. In what capacity?

(Testimony of John Stack.)

A. Deck-hand on her.

Q. Then this voyage was made on the "Kerr" as fireman in 1903, was the first experience you ever had on a steamboat on the Yukon River?

A. Yes, sir—no, it wasn't; I fired on the "Walter Irving" once before.

Q. When?

A. In 1898—in the fall of '98.

Q. You were firing on her?

A. Yes, sir; I fired—I didn't sign on her; the fireman got sick, and I took his place coming out.

Q. You simply worked your way down the river?

A. No, sir; she was going out—going up the river.

Q. From Dawson to Whitehorse?

A. From Dawson to Whitehorse. No; I didn't work my way up; I got paid for what I done.

Q. The balance of the time during these seven seasons you have been mining? A. Yes, sir.

Q. You have been mining in the Dawson country?

A. Yes, sir.

Q. You say there are other places around Circle where boats can be wintered safely?

A. That is what I understand from steamboat men.

Q. Where?

A. Well, I don't know just exactly where. I am

(Testimony of John Stack.)

—I was firing on the boat, and that is just what I heard.

Q. Whom did you hear it from, Mr. Stack?

A. Well, I believe Mr. Douglass, a friend of mine; he was pilot on her.

Q. Pilot on what?

A. On the "Robert Kerr."

Q. What was his name—Douglass?

A. Douglass.

Q. You say you heard him say there were other places? A. Yes, sir.

Q. Did he say where they were?

A. No; I just forget now. There is—I believe he mentioned there was a good place to lay up where we was, down from Twelve Mile Bar, before we left there.

Q. You say that the "Kerr" could have gone anywhere, except that her boilers were leaking at that time?

A. I didn't understand you.

Q. Did I understand you to say that the "Kerr" could have been moved and gone anywhere else if she had wanted to, if her boilers hadn't been leaking?

A. Yes, sir.

Q. Did you have any trouble getting into Circle?

A. Yes, sir—we had trouble all the way up.

Q. Did you have any trouble about low water?

(Testimony of John Stack.)

A. We had trouble about low water—yes, sir.

Q. What was the trouble?

A. Well, the boat was carrying too much water.

Q. Well, was the river unusually low for that season of the year?

A. Yes, sir, it was.

Q. It took you a couple of days to take all of her cargo off and lighter her over that bar, didn't it?

A. Yes, sir.

Q. Well, then, why did you say she could have gone anywhere else she had wanted to; wasn't the river still falling?

A. No, I don't believe it was. They had a rise of water there just before that—came along there. She took her cargo off, and went up light from Twelve Mile Bar to Circle, and then she took a part of the cargo aboard again at Circle, and went into winter quarters, and the "Lightning" went on up.

Q. She took her cargo off because she was drawing too much water; was that it?

A. Yes, sir.

Q. Now, how much water did she draw?

A. Well, I should judge drew about four feet eight or ten inches—something like that.

Q. The "Lightning" had much less draft than than the "Kerr," didn't she? A. Yes, sir.

Q. Did she get through to Dawson?

(Testimony of John Stack.)

A. No, sir.

Q. Why? A. Got froze in.

Q. What? A. She got froze in.

Q. Well, did I understand you to say that the "Kerr" could have gone on through to Dawson?

A. I didn't say she could have gone on through to Dawson.

Q. Where could she have gone, Mr. Stack?

A. Well, I couldn't say. That is a question I couldn't answer—where she could have gone to.

Q. You are not very familiar with the river, are you?

A. No, sir; I have been up and down it several times, is all.

Q. You have never had charge of navigating a boat up there? A. Never had; no, sir.

Q. You have never been on the lookout for safe places to winter at? A. No, sir.

Q. It has been no part of your business?

A. No, sir.

Q. You don't know anything about that, do you?

A. No, sir.

Q. Do you know whether this slough where the "Kerr" was wintered was a blind slough or not?

A. Well, no, sir; it wasn't a blind slough.

Q. Well, now, you say that the ice jams there in

(Testimony of John Stack.)

the spring, and the pressure of the water way back up piles the ice up high?

A. Yes, sir—it does usually in the main river—main channel.

Q. After the jam is broken—when that jam breaks, the ice that is piled up comes floating down the river, doesn't it? A. Yes, sir.

Q. A great mass of it? A. Yes, sir.

Q. If this "Kerr" was not in a blind slough, but in a slough where its head was open, wasn't there danger of the ice and the jams breaking above there—breaking and coming down that slough?

A. Well, they called it a safe place.

Q. They called it a safe place?

A. Steamboats.

Q. What steamboats?

A. Steamboat people.

Q. Who? A. Well, people.

Q. Who? Name them?

A. Well different ones.

Q. Well, name some master on the river—some experienced master on the Yukon River who said that was a safe place.

A. Well, I couldn't just name any; I heard—what is that fellow's name on the "Lightning"—the pilot? I heard him make the remark to Moore—I

(Testimony of John Stack.)

heard him make the remark to Moore, Captain Moore.

Q. You heard him make the remark to Captain Moore?

A. I heard him make the remark that the "Kerr" was in a good place—in a safe place.

Q. You say he was the master on the "Lightning"?

A. Yes, sir.

Q. Did you ever hear any other master say so?

A. Not as I remember—no.

Q. Did you know Captain Le Ballister?

A. Yes, sir.

Q. He is one of the most experienced men on the river isn't he?

Mr. BRONSON.—I object to that as not proper cross-examination.

A. I don't know anything about that.

Q. What is that?

A. I don't know anything about who is experienced men on the river.

Q. Well, don't you know that he has been navigating boats on that river for the last seven or eight years?

A. Well, I have heard of him.

Q. You have heard of him as a master navigating boats on the river, have you not?

A. Yes, sir.

Q. Did you know Captain Newcomb?

A. Yes, sir.

(Testimony of John Stack.)

Q. Isn't he one of the most experienced men on the river? A. I don't know.

Q. How is that?

A. I don't know whether he is or not. I know he is a master of a boat—that is all I know.

Q. Don't you know he has been for seven or eight years? A. Yes, sir; I know he has been.

Q. And in charge of some of the largest boats on the river, hasn't he? A. Yes, sir.

Q. Did you ever hear him say it was a safe place?

A. I am not acquainted with him.

Q. You say boats winter along the river in the ice? A. Yes, sir.

Q. In the river? A. Right in the river.

Q. Where?

A. That place there—that you call right in front of Dawson—right in the ice, and winter right eight miles below Forty Mile. Two boats wintered right there in the ice.

Q. In the main current of the river?

A. Right along the edge of it, yes.

Q. Were they in the slough?

A. No, sir; there wasn't any slough.

Q. What season—what boats do you refer to?

A. The "Louise" and the "Leah."

Q. What season? A. 1904.

Q. You mean a year ago?

(Testimony of John Stack.)

A. Or 1903—the fall of 1903.

Q. The “Louise” is the steamer that Captain Newcomb was on? A. The “Louise”?

Q. Yes, sir.

A. I don’t think Newcomb was on the “Louise.”

Q. Who was the master of the “Louise”?

A. I don’t know.

Q. Who was the master of the “Leah”?

A. I forgot who was on her that season.

Q. Captain Bludso? A. Bludso.

Q. You say that they wintered right out in the current in the river?

A. Right along the edge of the current, yes.

Q. Was there any protection from any bar or island above them, or anything?

A. Not where they were froze in, no, sir.

Q. Now, did they pick out that place to winter, or did they get caught there in the ice and froze in?

A. They got caught there.

Q. Did the boats get damaged?

Mr. BRONSON.—I object to that as incompetent, irrelevant and immaterial.

A. I don’t know; I wasn’t there at all when the river broke up.

Q. Did you see them there in the river?

A. I did.

Q. When? A. In the fall.

(Testimony of John Stack.)

Q. In the fall of 1903? A. Yes, sir.

Q. When the "Kerr" came up?

A. When I came up.

Q. And were you on the "Kerr"?

A. I walked up.

Q. You walked up? A. Yes, sir.

Q. They got frozen in on their way to Dawson, did they? A. Yes, sir.

Q. This same fall? A. Yes, sir.

Q. Did you see the "Lightning" the next spring?

A. No, sir.

Q. Did you go down the river on the "Kerr" on that voyage? A. I went down decking, yes, sir.

Q. What? A. I went down on her.

Q. From Dawson to St. Michaels?

A. From Dawson, yes, sir.

Q. Well, you say her boilers were leaking some?

A. Yes, sir.

Q. And they were fixed by some boilermaker at St. Michael. Mr. Jackling was the engineer in charge, wasn't he? A. Yes, sir.

Q. You say they didn't apply any cold water test to them when you got there? A. Yes, sir.

Q. You are sure of that? A. Quite sure.

Q. Were you there all the time?

A. Yes, sir.

(Testimony of John Stack.)

Q. And you can swear they did not apply any cold water test to these boilers after they got through working on them? A. No, sir.

Q. What were you doing there?

A. I was firing.

Q. Well, you were in port then, weren't you?

A. Yes, sir.

Q. Didn't have anything to do?

A. I was working, fixing her up and working around.

Q. What were you doing?

A. Painting and fixing the things up around her and scraping—

Q. And they couldn't have made these tests without your knowing it?

A. They took out the connections, all of them, in front of the boiler and fixed them all up.

Q. They couldn't have made this test without your knowing it? A. I believe not.

Q. How is that?

A. I am quite sure they could not.

Q. And you are sure they didn't make it?

A. Yes, sir.

Q. Where do you live now?

A. Well, I am living here in the city, when I am home.

Q. What business are you engaged in?

(Testimony of John Stack.)

A. Business?

Q. Yes, sir. A. Steamfitter—fitting.

Q. Steamfitter? A. Yes, sir.

Q. Where do you work?

A. I have been working down here for my brother. I haven't been doing nothing for several weeks.

Q. You are not an engineer? A. No, sir.

Q. Are you a boilermaker? A. No, sir.

Q. You work, then, as a day laborer, do you?

A. Yes, sir.

Q. You say that the steamer "Light" left St. Michael the "Kerr" did?

A. Left that same day, I believe so—same morning.

Q. And you say she had a barge in tow?

A. She left just a little before daylight.

Q. She had a barge, did she?

A. Yes, sir; she had a barge in tow.

Q. Did she bring any cargo on board?

A. I didn't go aboard of her; I don't know whether she had any cargo.

Q. You don't know whether she had any cargo on board or not, then? A. No, sir, I do not.

Q. Did you see her any more on her way up the river? A. No, sir.

Q. You say she got into Dawson?

A. Yes, sir; she got into Dawson.

(Testimony of John Stack.)

Q. She got in with her barge?

A. I heard she did; I wasn't there when she got in to see.

Q. What company operates the "Light"?

A. Well I believe it belonged to O'Brien—Tom O'Brien Company or some company like that.

Q. You say the "Kerr" was short of steam at times on the trip up the river? A. Yes, sir.

Q. Where is the worst place in the river—strongest current, Mr. Stack?

A. Well, the strongest current, I believe, is right down below Rampart—along in there somewhere, I think; I don't know, only what they say.

Q. She made that current all right, didn't she?

A. Yes, sir.

Q. The truth is she did not at any time have to tie up to the bank, and work her way up in that way, did she? A. Tie up to the bank?

Q. Work along by her towing from the bank?

A. No, sir.

Q. She made her way up under her own steam all the way up? A. Yes, sir.

Q. And carried her barge as far as Port Yukon?

A. Yes, sir.

Q. Now, you say that her boilers began leaking after she got out? A. Yes, sir.

Q. Did the engineer fix them up?

(Testimony of John Stack.)

A. Well, the second engineer fixed them. I worked pretty near every time we tied up with the second engineer.

Q. What was the matter? Were they leaking?

A. They were leaking; yes, sir.

Q. Leaking at the place where this boilermaker fixed them at St. Michael? A. Yes, sir.

Q. The same boiler that was leaking?

A. The same boiler—same boilers.

Q. Did he work on all of them there?

A. I believe so.

Q. Overhauled them, did he? A. Yes, sir.

Q. Were they all leaking on the way up the river?

A. Yes, sir.

Q. All three of them? A. Yes, sir.

Q. Leaking from the tubes, were they?

A. Yes, sir.

Q. Were they leaking at the head of the tubes where he had done work? A. Yes, sir.

Q. How much time did you say they lost on account of the boilers leaking?

A. Well, I should judge three days; something like that.

Q. As a matter of fact the most of this labor was done when she tied up to the bank to take on wood, wasn't it? A. Yes, sir

Q. How is that?

(Testimony of John Stack.)

A. Well, sometimes—sometimes—once or twice we had to stop before we got to the wood.

Q. Where did you stop on account of the boilers alone—what place on the river?

A. Well, I forget the places now. I don't remember the place. I know we stopped two days below Rampart, there—I think we stopped twice below Rampart—stopped above; stopped sometimes to fix the boilers. Every time that they stopped to fix the boilers, we would wash the boilers—wash down, and wash the boilers.

Q. That is usual on the river—to wash out the boilers? A. Yes, sir.

Q. That Yukon River is very trying on boilers, isn't it?

A. Yes, sir; dirty water—mucky.

Q. How often was it usual to wash out the boilers on that trip?

A. Well, they washed a couple of times a week.

Q. A couple of times a week? A. Yes, sir.

Q. How long does it take to do that?

A. Well, it takes 12 hours, 10 or 12 hours, to wash the boilers.

Q. Did the "Kerr" stop any oftener than that on this trip up, to clean out her boilers and make repairs? A. Any oftener?

Q. Than twice a week? A. Yes, sir.

(Testimony of John Stack.)

Q. How often did she stop to clean out the boilers or to make repairs on them?

A. Well, I know one time we ran up two days, and we stopped, for washing the boilers and fixing her up—two days' stop to fix her up—fix the middle boiler. A big stream of water came out of the tubes there.

Q. How long did it take you to fix it?

A. Well, the chances are it took six—five or six hours to fix it—that is after the—it took three or four hours for the boilers to cool down so you could get in them.

Q. After you left Port Yukon did you have any trouble with the boilers?

A. After we left Port Yukon?

Q. Yes, sir.

A. Yes, sir; we had trouble all the way up; they leaked all the time.

Q. They leaked all the way up?

A. Yes, sir; they leaked all the time.

Q. How much leaking was there coming down?

A. Well, they didn't crowd the boat coming down.

Q. Well, answer my question, Mr. Stack. How much leaking was there going down?

A. Well, down, the middle, just the middle, boiler leaked down; that is what I understood.

(Testimony of John Stack.)

Q. What do you know about it? You say you went down as fireman?

A. I didn't go down as fireman.

Q. You went as deckhand? A. Yes, sir.

Q. You don't know of your own knowledge that she leaked at all on the trip down?

A. No, sir.

Q. All you know is the leak there was going up?

A. Only what I learned from the boys; that is all.

Q. But of your own knowledge you don't know anything about it?

A. No, sir.

Q. How long did she stay in St. Michael?

A. She stayed there close onto two weeks.

Q. Did this boiler man make a thorough overhauling of the boilers?

A. Just worked on the back ends of them—just rolled them out, and calked them some.

Q. Did he go through the boilers, and take them apart? A. No, sir.

Q. Did he take the connections apart?

A. No, sir.

Q. Didn't you just now say they were not taken apart?

A. They were—took some of the front connections off, and also the water gauge down.

(Testimony of John Stack.)

Q. That was when he was doing this work, wasn't it? A. Yes, sir.

Q. Now, you had plenty of time there to give them all the overhauling they needed, didn't you?

A. Yes, sir. They couldn't—it seems they couldn't get a boiler-maker there when they first went there, and this boiler-maker, I think, was loaned from the N. T. Company to them.

Q. That is a man by the name of Jones you refer to, is it?

A. Jones—I believe that is his name.

Q. Were you there when the cargo was transferred from the "Elihu Thompson" to the "Kerr"?

A. Yes, sir.

Q. She got all of her cargo from the "Thompson," didn't she?

A. All of it—yes, sir—all but store supplies; she got them ashore.

Redirect Examination.

Q. (Mr. BRONSON.) You say that the second engineer and you worked on the boiler tubes?

A. Yes, sir.

Q. What did the second engineer say relative to the condition of those tubes?

Mr. BOGLE.—I object to that as incompetent, irrelevant and immaterial and hearsay evidence.

(Testimony of John Stack.)

A. Well, he says, "The tubes has been spread and rolled out so much now you can't hardly do anything with rollers on them any more—couldn't expand it."

Q. What is your trade? A. Steamfitter.

Q. Steamfitter? Do you know what the condition of those tubes was yourself, as to their being capable of being accurately and perfectly fitted?

A. Well, that was what I—what I know about it, I was right there with the second engineer, about the boilers, and he was afraid to roll them out any more; they was so thin on the ends they didn't have much to hold any more on the end of the boiler plate.

Q. Do you know whether these tubes were new tubes or old tubes? A. They were old tubes.

Q. Do you know Mr. Douglass who was the pilot?

A. Yes, sir.

Q. Counsel asked you relative to anybody's saying anything about the place where the "Kerr" was situated. Did you hear him say anything about whether it was in a safe place or otherwise?

Mr. BOGLE.—I object to that as incompetent, irrelevant and immaterial and hearsay evidence.

A. Well, I heard him say that the "Kerr" was in good safe winter quarters at Circle there.

Q. He was the pilot on the "Kerr"?

A. He was the pilot on the "Kerr"; yes, sir.

(Testimony of John Stack.)

Recross-examination.

Q. (Mr. BOGLE.) Who was this second engineer that you referred to?

A. His name is Atwell.

Q. Where is he now?

A. He is up in Fairbanks.

Q. Where is this man Douglass you referred to?

A. Douglass—he is somewheres out here.

Q. What is his name?

A. Well, we used always to call his Pasco. I knew him for the last 15 years, and that is the only name I knew him by.

Q. Pasco Douglass? A. Yes, sir.

Mr. BOGLE.—That is all.

(Testimony of witness closed.)

GEORGE KENNE, a witness produced on behalf of the respondent, being first duly sworn, testified as follows:

Q. (Mr. BRONSON.) Where were you employed in the fall of 1903?

A. I went on the steamer "Lightning." I was asked to go on the steamer "Lightning" by O'Brien to make that trip.

Q. On what trip?

A. On the trip down to the "Kerr."

Q. Did you see the "Kerr"?

(Testimony of George Kenne.)

A. Yes, sir.

Q. Did you go through her? A. Yes, sir.

Q. Did you see her boilers?

A. Yes, sir; I looked through the firebox from the back end and saw them leaking.

Q. What condition were they in?

A. They were leaking very badly.

Q. Where did you see her? Did you see her when she was laid up in winter quarters?

A. Yes, sir.

Q. Do you know what the condition of that place is as to safety for vessels to winter in?

A. Well, it was considered very fair. It has been considered a fairly good place. Other boats have wintered there. The steamer "Victoria" wintered there one year.

Q. How many seasons have you been on the Yukon River?

A. I have been on the "Kerr" and on a number of boats there. I have been in the country since '97.

Q. In what capacity have you worked?

A. Engineer and oiler. If I wasn't working on steamers—if I wasn't on a boat, I was working in the mines, working at my line of business, engineering.

Q. You went down on the steamer "Lightning" from Dawson to meet the "Kerr"?

(Testimony of George Kenne.)

A. Yes, sir, down below Twelve Mile.

Q. Have you seen the condition of the river there in the break-up of the ice in the spring?

A. Yes, sir; I have gone across it—walked across it an hour and twenty minutes before the river broke.

Q. Do you know how boats winter—the boats that navigate the Yukon River—where they winter ordinarily?

A. Yes, sir; they winter in sloughs, or places they can find a place—a nice place to get into. A slough is, of course, always preferable, though there has been boats wintered right in the main channel—that is, got caught.

Q. What would you consider the position of the “Kerr” as to danger or safety where she was, taking the ordinary conditions of the Yukon River?

A. I think she was in a fairly good place—a place where they have got her out from. They intended to put her there, and when we came down, of course, we lightened her up, and after the three days—about three days’ labor up and down there, taking the stuff off, she finally came down there, and she never made an attempt to look for any other place. She never turned a wheel there after she got at Circle, and never made an attempt to get out of there. I thought it was a very strange thing. What the idea was of us coming down there to lighten her up, and then stop

(Testimony of George Kenne.)

at Circle, just for a distance of about 15 miles. I thought it was a very funny sort of a way of doing business.

Q. Did you see the "Kerr" the next spring?

A. Yes, sir; I saw her when she came up the river.

Q. Where did she go in the spring?

A. She went down to Port Yukon to get a barge, and she hadn't the horse power for to get up to Dawson, because her tubes were leaking that bad; that is, she was a long time getting up to Dawson; then when she arrived at Dawson she got a general overhauling; they took all the tubs out—by the N. C.—I believe the N. C. machine-shop there took the tubes out and welded them, and put them back again—showing she was in a terrible condition—and made only one trip to St. Michael last year, they had done so much repairing to her.

Q. What was that repairing directed to—the whole of the boiler?

A. No, sir; the tubes and engines; in the engine-room, was all the repairing there was done, in the engine department—engine-room department.

Q. Have you ever seen the break-up of the ice on the Yukon River in the spring? A. Yes, sir.

Q. Have you seen the jams of ice formed?

A. Yes, sir; I have seen numbers of them.

(Testimony of George Kenne.)

Q. Just describe the operation—how the jam is formed in the ice.

A. You mean the closing or the opening?

Q. When the ice jams in the river.

A. Well, as a rule, when the ice—if it is at the close—is the closing of the season, the ice jams up—that is, the ice is thinner, of course, in the fall, as the ice runs, and it isn't extra thick. To a boat coming up the river, even though it be in the main channel, why, she forms—this flush ice comes around and forms forms a sort of eddy around her, and finally works its way up and climbs onto the boat, and climbs out—goes out for quite a distance from the boat, and in that form, the boat is practically in an eddy; with the ice around her, she is practically in an eddy; then, of course, this other ice coming down, keeps accumulating, and finally the jam comes, and it might possibly push the boat up on the ice. Of course, as it jams back, it pushes the boat up, and they are never in any danger—because I remember here last fall, the “Lightning,” just out from Dawson, was in the main channel, and there was the “Leah”—both of them. Now, that is the closing of the season, but now in the opening, when the river breaks, the ice as a rule doesn't pile over, the ice don't pile over; the ice goes under; like running

(Testimony of George Kenne.)

underneath, and there is a tendency to force the other out; they keep coming in. Lower in the river, when the ice—if it has a tendency to jam anywheres, the ice crushes out, and forces the boat up on the bank. At Dawson, the ice goes underneath, but it works the boat up, like a jackscrew—works it up in the air and crushes the boat up against the bank—pushes it up against the bank—it would eventually. I saw the “Lightning” myself; she was quite high up, but no damage there. The ice itself piles underneath them and works them up in the air.

Q. Do you consider that the cargo of the “Robert Kerr” there at Circle City was in any danger of destruction or injury? A. No, sir; I do not.

Q. You considered that the cargo or herself was in no danger?

A. No, sir; I don’t see how she would be in any danger—though what I thought, it was funny that she never made an attempt to leave there.

Mr. BRONSON.—That is all.

Cross-examination.

Q. (Mr. BOGGLE.) How long did you say you worked in the Yukon country? A. Since ’97.

Q. You say you worked for the Pacific Cold Storage Company? A. Yes, sir.

Q. Where?

(Testimony of George Kenne.)

A. I worked for them in their plant, as an engineer. I done steamfitting—that is, I done the fitting for them. I took the plan of it—helped take the plan of it for Mr. ——, who is boiler inspector in Dawson now at the present time.

Q. What was your part of it—were you the engineer in charge?

A. I was working as engineer for him.

Q. Mr. —— was the engineer in charge of the work, was he?

A. Yes, sir; he was the engineer in charge.

Q. You were working under him?

A. I was working under him, yes, sir.

Q. When did you quit the employ of the Cold Storage Company? A. In 1903.

Q. What time?

A. In May, I think it was—May or June, somewhere.

Q. Did you have any trouble with the company?

A. Well, in a way; it was with Mr. Jacklin. Mr. Jacklin didn't speak to me very nicely, and to avoid trouble I left there.

Q. You went in there that year under a promise of Mr. Jacklin to give you employment as fireman on the "Kerr," didn't you? A. No, sir.

Q. Isn't it a fact that you approached him be-

(Testimony of George Kenne.)

fore you went in there, and asked him for employment as fireman on the "Kerr"?

A. No, sir; he made arrangements with me the year prior.

Q. You did go in there to take employment on the "Kerr," didn't you, under Jacklin—didn't you?

A. Yes, sir—that is, he wrote a letter here.

Q. And you stayed there how long?

A. I guess I was there three weeks—somewhere in that neighborhood.

Q. Three weeks—and you drew on the company or your expenses going in, didn't you??

A. Yes, sir.

Q. And left the employ of the company before these drafts were taken up or paid by you, didn't you?

Mr. BRONSON.—I object to that as incompetent, irrelevant and immaterial.

A. As a rule—

Q. Answer the question; never mind about the rule.

A. Yes, sir. As a rule—

Q. Well, answer the question. Didn't you quit the employ of the company before your wages amounted to the amount of those drafts that you had drawn on them and that they had paid?

A. Yes, sir. I thought—

(Testimony of George Kenne.)

Q. That is all right; I haven't asked for anything you thought. Now, you say you were on the "Lightning" in the fall of 1903?

Q. In what capacity?

A. As engineer—second engineer.

Q. As second engineer? And you went on board the "Kerr"?

A. Yes, sir.

Q. You didn't go into the engine-room, you say?

A. No, sir; I didn't.

Q. You looked down through some holes somewhere?

A. Through the firebox—yes, sir.

Q. You saw from on deck into the firebox?

A. What is that?

Q. You looked from on deck into the firebox?

A. Yes, sir; opened the door of it and looked in—for instance, like opening the door here and looking through.

Q. What were you looking around the machinery for?

A. Well, he was at the boat—he was on the boat at the time—Mr. Stack, and I heard that they were leaking pretty bad, and I walked over, and he took me—told me I could look in there if I wanted to.

Q. He took you around there and showed you where they were leaking, did he?

A. Well, he just showed me—said that I could look in there.

(Testimony of George Kenne.)

Q. You and Jacklin were not on good terms, were you?

A. No, sir.

Q. And he was in charge of the "Kerr"?

A. Yes, sir.

Q. Where was the Kerr when you looked in and saw the boilers leaking?

A. Around Twelve Mile Bar, where she was going to winter—where she intended to winter.

Q. She didn't winter there, did she?

A. No, sir.

Q. How did you know she intended to winter there?

A. Well, it was a good wooded island.

Q. I didn't ask you why you supposed; how did you know she intended to winter there?

A. That is what I heard Douglass say.

Q. Who was Douglass?

A. He was the pilot on the "Kerr"; and in fact, some of the crew took a boat onto Rock Island there—showed that she was intending to winter there.

Q. Now, the fact is she couldn't get over the bar above there, could she until the "Lightning" got there and took her cargo off for her? Isn't it a fact that she couldn't get any further up because of the low water until the "Lightning" took her cargo?

A. Yes, sir.

Q. And that as soon as the "Lightning" took her

(Testimony of George Kenne.)

cargo, so that she could get over the bar above there, she went on up to Circle?

A. Yes, sir; she got up to Circle.

Q. Have you been at Circle during the winter time on the break-up in the spring?

A. No, sir, not at Circle.

Q. This slough where the "Kerr" was wintered, at Circle, was open up through the head, wasn't it?

A. Yes, sir.

Q. Was there anything to prevent the ice, if the jam broke above there, from coming down through the slough?

A. Well, it is this way: The river pushes the boat; it doesn't jam; it doesn't take the boat—

Q. I am not asking you that. Was there anything to keep the ice, on the break-up of the jam, from coming down through that slough?

A. There is a little bar there; yes, sir.

Q. Would that keep the ice out?

A. It would keep it out some; yes, sir.

Q. You mean to say that the ice, in former years, when the break-up in the spring season happened didn't usually come down through that slough?

A. Oh, it has come down—yes, sir, but that is not the thing—

Q. That is the question I asked you?

A. It is the—

(Testimony of George Kenne.)

Q. Never mind that; don't volunteer anything, Mr. Kenne; just answer the questions. You say that when the ice—the jam breaks and the ice strikes against the boat, that it simply shoves it out on the bank?

A. Yes, sir.

Q. And don't break it up?

A. No, sir; I have never seen it yet.

Q. Have you ever known of a boat wintering in the river with its cargo on board?

A. Yes, sir—and it was either the “Canadian” or the “Columbia” was caught at the steamboat slough—right in the slough—in the main channel—and if I ain't mistaken, also the “Leah,” but whether they had cargoes on, I am not certain about that, though I seen them when they came up, but whether they had cargoes on or not I don't know, but I walked up there where they got frozen in there, and she was in the main channel, too.

Q. Well, do you know of any steamer that has wintered along the Yukon River and kept her cargo on board during the winter? If so, name the steamer and the season, please?

A. Well, the “Lightning”—yes, sir.

Q. The “Lightning”? When?

A. That year we went down to the “Kerr” to take her cargo—had 109 tons, I believe it was.

(Testimony of George Kenne.)

Q. You mean the "Lightning" kept that cargo on board during the winter?

A. Well, she got froze in there with the cargo on her.

Q. I understand, but I asked you if you knew of any steamer that had kept the cargo on board during the winter after she got froze in, along the river?

A. No, sir.

Q. They always move the cargo, don't they?

A. That is the rule—yes.

Q. Now, isn't it a fact, Mr. Kenne, that if the ice shoves the boat up, as the "Lightning" was shoved up, any cargo in her would break her back?

A. No, sir.

Q. It wouldn't?

A. No, sir; I have seen the "Lightning."

Q. When up on the ice?

A. Yes, sir, when on the ice.

Q. You mean to say that if she had a hundred tons cargo in her it would not have affected her?

A. Well, froze as she was—she would lie—she had just as much chance to affect her, as she was, as if she had the cargo in her.

Q. Well, that is your judgment—if she had a hundred tons of cargo, that it would not have affected her?

(Testimony of George Kenne.)

A. Oh, it might have; I couldn't say. It would depend on how the ice was underneath her.

Q. Would you consider it safe for a steamer to carry her cargo on board when she was caught in the ice along the Yukon River, during the winter?

A. Yes, sir—in that nature, I would.

Q. If she had perishable goods, would that make any difference—whether perishable goods, or any other kind, as to the safety of the boat and the cargo?

A. Well, yes, sir; it would. Other boats have gone in there—there was the steamer "Canadian"; she went in, and she had her cargo on, and it was some time before they took it off. They let her cargo just—there was no teams went up there to take them down to Dawson, and they let them perish.

Q. They did lose them, didn't they?

A. It was just on account of freight; they didn't want to pay the expenses of freighting.

Q. I say they left it on there during the winter, and lost it? A. No, sir.

Q. They lost all that was perishable, didn't they?

A. They lost that because they didn't wish—it would cost so much to have it freighted to Dawson.

Q. That was the only way to save it, wasn't it?

A. That was the best way—yes, sir.

Q. That was the only way, wasn't it—to freight it in during the winter?

(Testimony of George Kenne.)

A. Why certainly that was the only way they could get it in there.

Q. Now, do you mean to say, Mr. Kenne, that it would have been safe in your judgment to have left the cargo on the "Kerr" during the winter and during the break-up in the spring of 1904?

A. Well, now, if it was left to me, that is the way I—

Q. I am not speaking about looking back on how it did break up—

A. Oh, no.

Q. But prior to that, would have said, during the month of January, 1904, that it was safe to leave that cargo on board that steamer?

A. Yes, sir; if it had been mine, I would have left it— yes, sir; that is the way I would do—that is, if I owned it, I would do that.

Q. You would not have moved it at all?

A. No, sir; I would not.

Q. That cargo could have been put ashore without losing it, could it, during the break-up in the spring?

Mr. BRONSON.—I object to that as incompetent, irrelevant and immaterial, and not proper cross-examination.

A. Well, if they had put it ashore they would have lost it anyway—that is, if they had done that;

(Testimony of George Kenne.)

therefor, that is why I say I would leave it on the boat, and taken chances of its being saved.

Q. You would have taken chances of its being lost on the boat, instead of putting it ashore, where it was certain to be lost—that is your idea, is it?

A. Yes, sir; I would.

Q. You would not have undertaken to haul them through to Dawson? A. No, sir.

Q. And now I understand the fact to be that the only thing that could be done with that cargo was either to leave it on board, and take the chances of its being saved, or to haul it overland during the winter to Dawson, wasn't it?

Mr. BRONSON.—I object to that as incompetent, irrelevant and immaterial and not proper cross-examination.

A. What is that?

Q. I say the only thing that could have been done with that cargo was either, first, to leave it on board, and take the chances of its being saved in the break-up in the spring, or to move it overland during the winter to Dawson?

A. No, sir; I think I would have left it there—yes.

Q. Answer the question: I say you would either have to do that, or move it, one or the other?

(Testimony of George Kenne.)

Mr. BRONSON.—I object as incompetent, irrelevant and immaterial, and not proper cross-examination.

Q I am not asking what you would have done; I say that was only one of two things that could have been done—either to leave it on board, or to move it during the winter time overland to Dawson.

Mr. BRONSON.—The same objection.

A. No, sir; I would have left it on board; I wouldn't—I don't understand you thoroughly—in case I would have had the cargo on board?

Q. If you didn't keep it on board, the only other thing was to take it during the winter time overland to Dawson, wasn't it?

Mr. BRONSON.—Same objection.

A. No, sir.

Q. What else could have been done with it?

A. There was sale for it at Tanana and Fairbanks—each a shortest distance than to Dawson.

Q. Sale for a hundred tons of meat?

A. Well, they were very short last winter—that is what we all were told.

Q. What winter?

A. That was the winter of 1903, wasn't it?

Q. Don't you know there were very few people in there in 1903?

(Testimony of George Kenne.)

A. Yes, sir, but nevertheless they were short of provisions.

Q. How far was that from Circle?

Mr. BRONSON.—I object to that as incompetent, irrelevant and immaterial.

A. One hundred and eighty miles, I believe.

Q. One hundred and eighty miles? There was no cold—

Mr. BRONSON.—I think if counsel for libelant desires to enter into matters that are wholly extraneous, or anything that counsel for respondent has not touched on in any way, shape or form, he should make the witness his own witness.

Mr. BOGLE.—You have examined him about the safety of this cargo there. You have examined him about it, and I am cross-examining him on the same thing.

Mr. BRONSON.—I have not alleged that he has any experience in the matter of cold storage plants or the matter of building ice-houses or means of saving cargoes, or anything of that kind. That has not entered into it, or as to markets, or anything of that kind.

Q. You say the "Lightning" was not in any danger?

(Testimony of George Kenne.)

A. No, sir, Mr. Douglass got her down all right.

Q. What?

A. Mr. Douglass got her down all right. Of course, the ice did put her up on the bank, but nevertheless he got her down. Other boats got there the same way—the “Louise” was up against the bank. You never see them crush down and sunk through the ice; you always see them piled up. It is always piled up.

Q. The water isn't deep enough in the river to sink one of these boats absolutely?

A. Well, yes, a pole has been sunk in it 12 feet.

Q. The water along where the “Kerr” was wouldn't be more than 6 or 8 feet deep, would it?

A. Where she wintered?

Q. Yes, sir? You say you never saw a boat absolutely sunk? You couldn't sink the “Kerr” in that water, could you?

A. Not right there, but in other parts of the river, yes.

Q. The Yukon river is shallow as a rule, isn't it?

A. There is places it is; in other places, we don't know; we use the—usual method of sounding is with a pole 12 feet, and 12 feet is good depth, if you sink them that deep; then the current would wash the whole works away.

(Testimony of George Kenne.)

Q. You say they got the "Lightning" down all right? A. Yes, sir.

Q. What time did they get her down?

A. They got her down in July, I believe. They were very slow—in fact, they had to send to Dawson for the paraphernalia in order to do it.

Q. Suppose this cargo she took from the "Kerr" had been left on board the "Lightning," what would have become of it?

Mr. BRONSON.—I object to that as incompetent, irrelevant and immaterial, and calling for the conclusion of the witness, in face of the evidence that the "Kerr" was not injured in any way, shape or form at all.

Q. Suppose the cargo that was on board the "Lightning" when she went into winter quarters was left on board that steamer, what would have become of it.

Mr. BRONSON.—I object to that as incompetent, irrelevant and immaterial and calling for the conclusion of the witness.

A. I don't know what would become of it. It would come pretty near being—

Q. Answer the question if you can. Would it have been lost, or not? A. I couldn't say that.

(Testimony of George Kenne.)

Q. The cargo was refrigerated meats and poultry, wasn't it? A. Yes, sir.

Q. You mean that that cargo had remained on board until the "Kerr" was gotten off the bank where she was shoved, why you couldn't tell whether it would have been destroyed or not?

Mr. BRONSON.—I object to that as incompetent, irrelevant and immaterial and not proper cross-examination, and as based upon a state of facts which is not shown to exist, because the "Kerr" was not shoved upon the bank anyway.

Mr. BOGLE.—I have not asked about the "Kerr"; that is the "Lightning."

A. Well, I don't know—at first there was a cabin on the front side—have two rooms for the meat in the cabin—possibly their intentions were to build a house around it—an ice-house, or something. I never seen it done, but perhaps it could be done—and made a cold storage that way. There are other cold storage plants in Dawson that way. There is a cold storage plant in Dawson, and they use the ice for storing things. I think they could do the same thing—build a cabin around it, as far as that is concerned. There is plenty of timber where this was.

Q. Now, please answer my question without volunteering something else. I asked you if this cargo

(Testimony of George Kenne.)

had been left on board the steamer "Lightning" until she was gotten back into the river in the spring or summer of 1904, would it have been ruined or not?

Mr. BRONSON.—I object to that as incompetent, irrelevant, and immaterial, and not proper cross-examination, and based on a state of facts which has not been shown to have existed.

A. Of course, that was not a cold storage boat; it had no plant—

Q. If the ice had broken in the spring in such manner as to come down through the slough where the "Kerr" was, moving so as to force her up on the bank in the same manner the "Lightning" was, would not any cold storage cargo on the "Kerr" have been lost?

Mr. BRONSON.—I object to that as incompetent, irrelevant and immaterial, and not proper cross-examination, and not based on a state of facts shown to have existed.

A. I don't think it could, because at Circle it is a flat, and if the river did rise, it would certainly rise over the banks, and consequently take the boat up all over the banks,—put it up possibly up in the store somewhere. The N. C. store is right up in front of it.

(Testimony of George Kenne.)

Q. Would the cargo have been safe in that condition?

Mr. BRONSON.—I object to that as incompetent, irrelevant and immaterial, and not proper cross-examination.

A. Yes, sir; it would.

Q. You mean that the ice and water might have picked this boat up and shoved it away upon the shore, and receded and left it up there?

A. Yes, sir.

Q. And still these cold storage products would be perfectly safe?

Mr. BRONSON.—The same objection.

A. Why, certainly—yes, sir.

Q. Putting it out on the bank wouldn't have any effect on the cold storage plant on the boat?

A. It might possibly leak a few pipes.

Q. It might possibly have broken it in two, might it not?

Mr. BRONSON.—Same objection.

A. I can't tell that.

Q. You are guessing on things—what would happen when you pick up a boat and set it up there on the ground?

Mr. BRONSON.—Same objection.

A. No, sir; I am not—no, sir; I am not; it is the

(Testimony of George Kenne.)

way I seen other boats pushed. It pushes them against the bank. It don't push them to the center of the river or pile them up; the ice gets underneath them and pushes them up. It would naturally push them right up, right over onto the bank, and leave them there, for that matter.

Q. Isn't it true that the "Lightning" was on top of the ice there thirty or forty feet?

A. No, sir—28 feet above the river, yes, sir.

Q. That ice was in great big pieces, and some of it under the bow and some under the stern, with the middle part of the boat hogging or bending, wasn't it?

Mr. BRONSON.—Same objection.

A. She was hogged a little bit—yes, sir.

Q. If there had been cargo enough in that part of the boat, it would have broken it through, would it not?

Mr. BRONSON.—Same objection.

A. No, sir; it would not; they pried the bottom up underneath the water, and the "Leah" was the same way; she was up on the bank.

Q. How much experience have you had on the Yukon steamers?

A. I have had a great deal, because I have been on the river for a number of years.

(Testimony of George Kenne.)

Q. How many years were you on the coast.

A. I have been with the cold storage company, I was with the White Pass Company, and I was with the Tom O'Brien Company, and then with the N. C. Company.

Q. In what capacity?

A. Oiler and engineer.

Q. You have never had the navigation of a boat?

A. The navigation? No, sir.

Redirect Examination.

Q. (Mr. BRONSON.) Mr. Kenne, I understood you to say awhile ago that if the cargo of the "Kerr" was taken off and left on the banks, it would have been destroyed. You referred to the facts, did you not, that if it was left there and exposed to the weather, without any protection, it would be destroyed?

A. Well, that is what I meant—certainly.

Q. You didn't mean to say it would have been destroyed if it was properly enclosed in an ice-house?

A. No, not in an ice-house—certainly not—no, certainly not; I meant, of course, if it was right on the boat, certainly, as they had no cold storage plant on the boat.

Q. When you stated that if the cargo on the "Kerr" were taken ashore it would be destroyed, you referred to the fact, did you not, that if it were left there exposed to the weather in the spring?

(Testimony of George Kenne.)

A. Certainly, certainly.

Q. To the sun and open air?

A. Certainly.

Q. You didn't refer to any protection given by any ice-house? A. No, sir.

Mr. BRONSON.—That is all.

(Testimony of witness closed.)

At this time further hearing was adjourned to a date to be fixed by stipulation.

March 7th, 1905, 1 P. M.

Hearing resumed pursuant to adjournment.

J. B. DOUGLAS, a witness produced on behalf of the respondents, being first duly sworn, to testify the truth the whole truth and nothing but the truth, testified as follows:

Q. (Mr. BRONSON.) What is your full name?

A. J. B. Douglas.

Q. What is your business?

A. Steamboat man—captain.

Q. How long have you been acquainted with the Yukon River, A. Since '99.

Q. Were you engaged on the steamer "Robert Kerr" in the fall of 1903? A. Yes, sir.

Q. In what capacity? A. Pilot.

(Testimony of J. B. Douglas.)

Q. Did you make the last trip on her from St. Michaels up the river?

A. Yes, sir, to Dawson.

Q. Do you know approximately what cargo she had aboard of her, in tonnage—an approximation?

A. Yes, sir; I know pretty close what she had; she had about two hundred and thirty-five or two hundred and forty ton on her, and two hundred and fifty ton on the scow—hay, and salt and oats.

Q. Do you know approximately what her cold storage weight is—what the tonnage weight of her cold storage compartment amounts to?

A. Only what I heard the chief engineer say; he said about a hundred and twenty tons.

Mr. BOGLE.—I object to that as irrelevant and immaterial and incompetent, and move to strike out the answer.

Q. Do you know of your own knowledge somewhere near—have you got any idea of what it amounts to, from your own knowledge?

A. Well, I couldn't very well say, because I never seen one built, nor never helped build one.

Q. When did she leave relative to when the steamer "Light" left?

A. She left the same morning, about an hour after.

(Testimony of J. B. Douglas.)

Q. Do you know about what cargo the "Light" had aboard of her? A. Yes.

Q. About what?

A. She had about seven hundred tons—her crew and everybody.

Q. Including everybody she had?

A. Yes, sir.

Q. Do you know whether she got through to Dawson or not? A. Yes, sir; she got through.

Q. How does the "Light" compare with the "Kerr" in point of size and capacity?

A. They are sister ships; they are both the same.

Q. Do you know what the condition of the "Kerr's" boilers was?

A. Well, I know that there was trouble all the way up the river with them.

Q. What was the trouble? A. Leaking.

Q. What was the result of this leaking of the boilers? A. Well, we lost lots of time by it.

Q. What effect did it have on the steam pressure?

A. Well, you couldn't carry steam. She couldn't carry the steam she should carry if her boilers were in good shape.

Q. Do you know about what her boilers should carry?

A. A hundred and fifty pounds, she is allowed.

Q. And do you know what she did carry?

(Testimony of J. B. Douglas.)

A. Oh, from ninety to a hundred and twenty.

Q. What effect did the leaking of the boilers have on her going up the river at any particular places that you know of?

A. In what way do you mean?

Q. Well, what effect—what did you have to do to the boilers if anything?

A. Oh, we stopped three different times, that I know of, and they rolled the tubes, and put ferules in them and plugged some of them.

Q. What is the effect of plugging the tubes?

A. Well, it stops the heat from going through them, but then stops them from leaking.

Q. Do you remember of any places where you stopped?

A. Well, the places where we stopped, only one has got any name that is Bishop Manning, seventy-five or eighty miles above Androfsky—then stopped at Bishop Manning—then stopped about thirty miles above the mouth of Tanana.

Q. What was the length of those stops?

A. About thirty-six hours.

Q. Do you mean at a time?

A. To cool the boilers down to work in them, and get up steam again—takes time.

Q. Do you mean thirty-six hours altogether, or each one?

(Testimony of J. B. Douglas.)

A. No, each time. Had to cool them down so you can get into them to work.

Q. Did you make any other stops on account of the boilers?

A. Not that I could remember of—just them three, we stopped for that length of time.

Q. Did you make any stops at all?

A. Well, no, I don't think we did—no stop—not any more than we used to work on the wood yard.

Q. Can you tell within an approximation about how much time the "Kerr" lost altogether owing to this leaky condition of her boilers, slowing down her steam, etc.?

A. Well, we lost about four days and a half—stopped altogether, and then her steam being down low—carrying low steam, I suppose we lost seven or eight days on the trip, at least.

Q. Do you remember any particular places on the trip where the effect of the steam being low retarded the vessel's speed?

A. Well, all those places that we stopped she would be leaking and the steam would get lower and lower, and finally she wouldn't make no headway at all, and then we would tie up.

Q. Do you know what the condition of hull and keel and frame of the "Kerr" was?

(Testimony of J. B. Douglas.)

Mr. BOGGLE.—That is objected to as irrelevant, immaterial, no issue made thereon in the pleadings.

A. She was—she is like a good many of them other boats; she is hogged—her hull.

Q. Explain just what you mean by that?

A. Well, the chains—them boats was broke down, going up north, when they were towing them up, and chains was all broke, and the boat got doubled down, and they never was put back in their place again rightly—never was chained up properly again.

Q. What effect did that have on the draught of water?

A. Well, it leaves a hump in the boat, where it will draw more water than if she had a level keel—the bottom of the boat was perfectly level.

Q. You mean there is a hump on the bottom of the keel of the boat?

A. Yes, sir—like this (indicating); a hump on the boat.

Q. Do you remember a point called Twelve Mile Bar?

A. Yes, sir.

Q. How far is that below Circle City?

A. Twelve miles.

Q. What took place there?

A. When we got that far, we couldn't get across the bar, and waited there until the "Lightning" came

(Testimony of J. B. Douglas.)

down and lightered our cargo—lightered us over the bar, so that we could get up to Circle City.

Q. What, if any, place is there for wintering a boat at that point, near Twelve Mile Bar?

A. There is good winter quarters at Twelve Mile Bar—right below.

Q. How far?

A. Right at the foot of the bar—is a big slough comes out.

Q. What kind of slough is it?

A. A dead slough; water only comes through at very high water—up the head of it.

Q. Do you know whether or not it is considered a safe place to winter boats? A. Yes.

Q. How is it considered?

A. Well, because there is—water would have to be exceptionally high if it ever came through there in the spring—if it ever put any ice through it.

Q. Among river people how is it considered; a safe place, or otherwise?

A. Yes, sir; it would be considered a good place to winter a boat by any one.

Q. Do you know where the “Kerr” did finally winter? A. Yes, sir; right at Circle City.

Q. At Circle City? A. Yes, sir.

Q. What did you consider, and do you consider her position there to have been, as to safety?

(Testimony of J. B. Douglas.)

A. She was in a very good place; nothing but a slough.

Q. What is that?

A. She was right up past the channel—a little out of the main channel, in the mouth of the slough that comes in there—comes in at Circle City.

Q. Did you consider that a safe place at that time?

A. Yes, sir; that was considered a very good place; been several boats wintered there.

Q. Were you present when Mr. Bryant, the manager of the company, came down from Dawson, and did you hear him in any conversation with the captain of the boat relative to getting through to Dawson?

A. Oh, yes—yes; Mr. Bryant was there; he came down on the “Lightning”; he was there three or four days.

Q. What did you hear him say relative to getting the boat up to Dawson?

A. On the morning we came up, we intended to go on to Dawson—on the morning we got the “Kerr” to Circle City, when the captain got up there, he heard that the steamer “Susie” had got some holes punched in her up above; so he didn’t want to go then; he wanted to leave the boat where she was, and Bryant told him that—he says “If you possibly can,” he says, “I would like to get her through, be-

(Testimony of J. B. Douglas.)

cause meat is going to be very high this winter, and is going to be scarce." He said to fill all their contracts, that they had to have the boat there.

Q. Do you know what the course of the water was after you left St. Michaels; was it falling, or rising, or what happened?

A. It is always falling at that time of year—that is, you may get a small rise in the fall, along when the rains start—the fall rains, until it starts to freeze again; but it is usually going down about that time. We generally get a small rise along about the time the fall rains come on.

Q. Do you know what the condition was at this particular time—whether there was any rise?

A. Oh, yes; there was a rise when we struck the lower end of the flats—it rose.

Q. When you were at the lower end of the flats?

A. Yes, sir—rose about two feet—between two and three feet, and stayed up two or three days, then started to drop again.

Q. What time was this relative to your leaving St. Michaels—how long after you left St. Michaels, as near as you can tell?

A. It must have been about pretty near a month—twenty-five days.

Q. What is the ordinary time from St. Michaels to Dawson?

(Testimony of J. B. Douglas.)

A. Well, them boats shouldn't be longer than about twenty-four days—with a tow.

Q. You say "with a tow"?

A. Yes, sir.

Q. What, if anything, would have been the effect of this rise in enabling the "Kerr" to get over the flats, if she had been there at the flats when the rise came?

A. I don't think we would have had any trouble if we had been there then.

Q. Do you know whether or not any repairs were put on the "Robert Kerr" the next summer?

A. Which—the following summer? I know they done a little work on her that spring after she came up from Circle City.

Q. Well, do you know what particular part of the vessel work was done on?

A. Well, I know they put a lot of new tubes in her, and done a lot of work on her engines, too—I don't know just what it was.

Q. Do you know, Mr. Douglass, where the steamer "Light" went after she arrived at Dawson on that last trip?

A. She made a trip to Whitehorse.

Q. And from there where?

A. Back as far as Selkirk and then she went into winter quarters.

(Testimony of J. B. Douglas.)

Q. Do you know what, if anything, was done to the "Kerr" with relation to the hog in her keel?

A. No, I don't; I know she was out on the ways the year before that, but what they done to her I could not say; I know they raised her up some but they didn't have time to do any kind of a job on her.

Cross-examination.

Q. (Mr. BOGLE.) What did you say was your position on the "Kerr"? A. Pilot.

Q. When did you take service on the "Kerr"?

A. About the 1st of August.

Q. At St. Michael? A. No, sir, at Dawson.

Q. You had some trouble in your settlements with the company that fall?

A. Well, not particularly, no.

Q. Well, what was the trouble?

A. Oh, there was not any trouble particularly; they paid us off down the river.

Q. You had some feeling about it?

A. I don't think they done what was right.

Q. You had a grudge against the company?

A. No, sir, not particularly.

Q. What do you mean by not particularly?

A. Oh, if they thought it was all right it was all right, I suppose, but I didn't think that was just the

(Testimony of J. B. Douglas.)

right way to do; they didn't fetch us to our home port.

Q. Who have you you talked to about what your testimony in this case would be?

Mr. BRONSON.—I object to that as immaterial, irrelevant and incompetent.

A. Well, I never talked with anybody particularly about it.

Q. Well, have you talked with anybody generally about it?

A. No, anyone but Mr. Bronson; he asked to see me—asked if I was on the boat.

Q. Who notified you that Mr. Bronson wanted to see you? A. A man by the name of Kenne.

Q. The same man that has been a witness in this case? A. I believe he is.

Q. Did you tell him what your testimony would be?

A. Not any more than he asked me to come up to the office, they wanted to see me, so I went up there.

Q. Did he tell you what they wanted to prove by you?

Mr. BRONSON.—Objected to as immaterial, incompetent, irrelevant and not proper cross-examination.

(No answer.)

(Testimony of J. B. Douglas.)

Q. Answer the question.

A. What they wanted to prove?

Q. Yes.

A. That the boat should have got further up the river than she did.

Q. Kenne told you that was what they wanted to prove?

A. Something to that effect; I don't know whether that was just the words or not.

Q. Did Kenne tell you that you would be compensated for your testimony in the case?

Mr. BRONSON.—Objected to as immaterial, incompetent and irrelevant and not proper cross-examination.

A. He said if we had to come here any time our expenses would be paid—if we had to attend court.

Q. Did he state how much the pay would be?

A. No, sir, didn't say how much.

Q. You never had any arrangement about how much you would be paid?

A. Our expenses and if it made us any trouble we were to be paid for it.

Q. You say the "Kerr" was hogged on her trip from Seattle to St. Michael?

A. No, sir—yes, sir, on her first trip.

Q. That was when Moran took his fleet of steamers up to St. Michael?

A. Yes, sir.

(Testimony of J. B. Douglas.)

Q. They were all more or less hogged on this trip?

A. Yes, sir.

Q. And they have all been in service on the Yukon river ever since?

A. No, sir—up the river; yes, sir.

Q. And the “Kerr” has been in service on that river? A. For two or three years.

Q. Has not she ever since Moran took her up that first trip?

A. Not at first; the first year she came up I think was 1900—no, she was up once before that one trip, and then the cold storage bought her, I think, in 1900.

Q. And she has been running four years on the route? A. Yes, sir.

Q. You say she was put on the ways and repaired to some extent the year before this accident occurred? A. She was, yes, sir.

Q. You were in St. Michael when she was there on this trip, were you? A. I was.

Q. Who repaired the boilers down there?

A. I don't know that there was any repairing done much except what the engineers did themselves on her.

Q. Were you on board all the time?

A. Yes, sir; well, not all the time, I used to go ashore every day, I guess.

(Testimony of J. B. Douglas.)

Q. Did you keep in touch with what was done in the engine-room? A. No, sir.

Q. Did you know that a boiler repairer by the name of Jones was employed at St. Michael?

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

A. I don't know; whatever they done on the boiler at St. Michael I don't know; I don't know what they did do about it.

Q. And you say you had no connection with the engine-room? A. No, sir.

Q. How far is Andresfski from St. Michael around the water route? A. About 200 miles.

Q. How long do you say they stopped at the point about 70 miles above Andreafski?

A. We stopped one afternoon about four o'clock and was there that night and the next day until after dark.

Q. Did you take on any wood there?

A. No, sir; we had taken on wood just below; the boilers started to leak worse than ever and we had to stop.

Q. Where is the strongest current in the Yukon river?

A. On the lower Yukon places on the flats I believe are about the swiftest.

(Testimony of J. B. Douglas.)

Q. Did the "Kerr" pass those points under her own steam?

A. Well, yes, as far as she could.

Q. Well, she passed through those currents?

A. Yes, sir, she did.

Q. It quite frequently happens that those Yukon river steamers have to put a line ashore and pull themselves through places of that nature?

A. Never on the lower river; they do on the upper; I never heard of it on the lower river.

Q. How long have you been on the lower river?

A. Since 1900.

Q. And you state as a positive fact that steamers on the lower river never put lines ashore and pull themselves through? A. None I was on.

Q. What ones have you been on?

A. The "Robert Kerr," and the "Glenora" and the "Pearl."

Q. And how many round trips have you been on up the river?

A. Six or seven from St. Michael.

Q. From St. Michael? A. Yes, sir.

Q. What day did the "Kerr" leave St. Michael?

A. I don't remember the exact date, it was somewhere around the 1st of September.

Q. Did you strand at any time going up the river?

A. Yes, sir.

(Testimony of J. B. Douglas.)

Q. How often? A. Twice.

Q. Where was the first time?

Mr. BRONSON.—Objected to as irrelevant, incompetent and immaterial and not proper cross-examination.

A. The first time was—let me see—it was about 80 miles below a place called Kaltag.

Q. What is the place?

A. A place called Kaltag.

Q. How long were you stranded at that point?

A. About six or seven hours.

Q. How did you get off?

A. The barge got stuck and we took a lot of the oats off her on the steamer and pulled it off and got off.

Q. How long were you delayed there?

A. Six or seven hours.

Q. Where were you next stranded?

A. Up on the flats.

Q. When was that?

A. Along about the 1st of October, I guess.

Q. Was it not the 22d of September?

A. Well, I don't just remember the date, it was around there somewheres, the end of September or the 1st of October.

Q. Have you any way that you can fix the date?

A. No, sir, not without the log-book.

(Testimony of J. B. Douglas.)

Q. If the log-book fixes it on the 22d of September would that be correct?

A. Yes, sir, if it is in the log-book that way.

Q. You were on that bar for six days?

A. Five days, I guess.

Q. Didn't you get on the bar the 22d and get off the 28th?

A. I think it was five days we was there.

MR. BRONSON.—Objected to as incompetent, irrelevant and immaterial and not proper cross-examination, and on the ground that if counsel desires to prove his case by my witness he at least ought to bring in the log-book in court and use it as the best evidence.

Q. How far below Circle is this point where you stranded the last time?

A. You mean where we was hung up the five days?

Q. Yes. A. About sixty miles.

Q. What is the distance from there to St. Michael? A. From Circle you mean?

Q. No. from where you stranded.

A. 320.

Q. How long would it ordinarily take to make that distance from St. Michael up there?

A. About six days.

(Testimony of J. B. Douglas.)

Q. That would be at the rate of about how many miles a day of 24 hours?

A. She didn't run 24 hours then.

Q. Well, every 24 hours about how many miles did you estimate she was making?

A. If she made 50 or 60 miles she was doing pretty well.

Q. Then if she had not stuck on this bar on the 22d—if she had had no disaster at that time—and had traveled at her regular speed as she was then doing she would be in St. Michael about the 28th?

A. Into Dawson you mean?

Q. Yes, sir. A. Yes, sir.

Q. What was the stage of the water when you got off that bar?

A. It was starting to freeze, it was falling all the time.

Q. The water was unusually low that fall?

A. Yes, it was.

Q. Didn't that low water come earlier in the fall than usual?

A. No, sir, I don't think it did. There was some boats on the river pretty late.

Mr. BRONSON.—Respondent objects to all this evidence as incompetent, irrelevant and immaterial, grossly unfair, and as an attempt to prove libelant's

(Testimony of J. B. Douglas.)

case on cross-examination and by respondent's witness, and desires to enter a protest to that effect.

Q. Who did the repairing on the boilers of the "Kerr" during the time they were leaking on the trip up? A. The engineers.

Q. Who were they?

A. There was Jaclin—I forget his initials—the chief engineer, and a fellow by the name of Atwell.

Q. Were you in the engine-room at any time on the trip up?

A. Yes, I was. I would go down there once in a while.

Q. Is that a place where the pilot is expected to be?

A. Well, when he is off watch he can go where he wants.

Q. What were you down there for?

A. Oh, just going down to talk to the engineers.

Q. How often did you go down in the engine-room?

A. I was going down pretty near every evening.

Q. How much steam did you say they carried?

A. They used to have 90 or 120; when they used to get 90 it was about time to quit.

Q. Do you know how much steam they carried in going through the strong currents at the points you have spoken of? A. No, sir, I don't.

(Testimony of J. B. Douglas.)

Q. Don't you know that that steamer carried 165 to 170 pounds of steam during the time they were going through those currents?

A. I believe they did once run the steam up; we tied up to get steam at Halfway Island, and then she didn't get out very swift.

Q. Then they did carry steam beyond the point permitted by their instruction?

A. I could not say as to that; I could not see the steam-gauge—I could not say whether they carried more or not.

Q. You say they were allowed to carry 150 pounds of steam? A. Yes, sir.

Q. There was considerable difficulty on this trip in getting your wood for fuel along the river?

A. We didn't have much trouble; other boats did. We had wood mostly every place contracted and piled.

Q. Didn't you once when you came to get the wood find that other boats had got it?

Mr. BRONSON.—Objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

A. One place we did.

Q. You had to take the crew to cut wood at that place? A. Yes, sir.

(Testimony of J. B. Douglas.)

Q. You had the wood contracted for in advance and some one had taken it before you got there?

Mr. BRONSON.—I make the same objection.

A. Yes, sir.

Q. How long were you delayed in getting your wood when you got there?

A. We were there about 7 hours.

Q. Were you delayed at any other wood station at any time where it was necessary to get wood?

Mr. BRONSON.—I object to that as incompetent, irrelevant and immaterial and not proper cross-examination.

A. That was the only place that we lost any time. We cut a lot of wood on the flats but we done it at night when we had to tie up any how so we didn't lose time over it.

Q. How many hours a day did you steam at that time?

Mr. BRONSON.—Objected to as irrelevant, incompetent and immaterial.

A. I could not tell you some places we tied up all night, but down the lower river where it was any-ways good we was running all night.

Q. When you got up in the flats how many hours a day did you steam?

Mr. BRONSON.—Same objection.

A. Sixteen or eighteen hours; then sometimes

(Testimony of J. B. Douglas.)

we could run if there was a good piece of river, we could run until daylight.

Q. You say at Twelve Mile Bar below Circle you had to lighter all your cargo across before you could get over? A. Yes, sir.

Q. How long were you delayed in doing that?

Mr. BRONSON.—Objected to as not proper cross-examination.

A. Three days; the “Lightning” was there then.

Mr. BRONSON.—This question relates to the transfer of the cargo to the “Lightning?”

Mr. BOGLE.—Yes.

Mr. BRONSON.—I didn’t understand that then I will withdraw my objection.

Q. The river was lot at that time?

A. Yes, sir.

Q. You heard about the disaster to the “Susie”?

A. Yes, sir, afterwards.

Q. Did you hear about the disaster to the “Louise” also?

Mr. BRONSON.—Objected to as not proper cross-examination.

A. The “Louise” didn’t have any trouble, she was helping other boats. She was supposed to have gone to St. Michael that fall—she was up to Dawson and came back again.

(Testimony of J. B. Douglas.)

Q. The "Susie" didn't get her cargo through?

A. No, sir.

Q. How many boats were there that had to cache their cargoes along the river that fall?

Mr. BRONSON.—I object to that as not proper cross-examination.

A. The "Susie" and the "Leah" left part of their cargoes scattered there, the "Louise" got hers through and I think the "Rock Island" got hers through to.

Q. And the "Light" got through?

A. Yes, sir.

Q. Were you in Dawson that fall?

A. I was in Dawson that fall; yes, sir.

Q. Do you know of your own knowledge that the "Light" got through with her cargo?

A. Yes, sir, she got through.

Q. You know that of your own knowledge?

A. Yes, sir.

Q. You were on the "Kerr?"

A. Yes, sir.

Q. And she was at Dawson?

A. Yes, sir.

Q. Then how do you know it of your own knowledge?

A. I know all the crew.

Q. You mean they told you?

A. Yes, sir; I know she didn't leave no cargo on the river.

(Testimony of J. B. Douglas.)

Q. Who told you that?

A. The crew and I was on board of her.

Q. Well, as a matter of fact you don't know it of your own knowledge? A. Well, no.

Redirect Examination.

Q. (Mr. BRONSON.) Did you walk up the river from Circle?

A. No, sir, from where we left the "Lightning" at Washington creek.

Q. You walked on up? A. Yes, sir.

Q. Did you see any cargo that the "Light" put ashore? A. No, sir.

Q. You would have seen it if there had been any put ashore?

A. Yes, sir.

Q. Counsel asked you of your own knowledge whether she got through?

A. I know the boat got to Dawson and they never put no cargo off her; I know that the crew came to Dawson.

Q. You spoke of one place where you stopped to push the steam up—to accumulate steam—to go through some rapid? A. Yes, sir.

Q. Was it necessary to stop her to accumulate that steam pressure? A. Yes, sir.

Q. You tied up to get the steam pressure?

(Testimony of J. B. Douglas.)

A. Yes, sir.

Q. Mr. Douglass when you were down in the engine-room off watch what did you hear the members of the crew say about the steam pressure and the condition of the boiler?

Mr. BOGGLE.—Objected to as incompetent, irrelevant and immaterial and hearsay evidence.

A. Well, that the boilers was in bad shape and leaking.

Q. What did they say about her speed?

A. She was making slow time—she was bound to do that when her steam was down.

Q. Is it customary or usual for boats on the Yukon River to stop at nights in the fall of the year?

A. Yes, it is.

Q. Is it customary for them to run aground on the bars?

A. Yes, they do that.

Q. And get pulled off?

A. Yes, sir.

Q. Is it customary for them to cut wood?

A. Yes, sir.

Q. Are these things taken into account when you figure out the time a boat ought to take to reach Dawson?

A. Yes, sir.

Q. Have you any idea what time a steamer like the "Kerr" with boilers all right, and if she didn't need to make any stops could go along right straight

(Testimony of J. B. Douglas.)

ahead from St. Michael to Dawson—without any stop—what time she would take?

A. I think for a continuous run about 14 or 15 days with a tow; yes, less than that.

Recross-examination.

Q. (Mr. BOGGLE.) All steamers have to stop for fuel along that river?

A. Yes, sir, sometime—oil burners and burning wood.

Q. How much time does that take in that trip up?

A. A boat will lose an average of about four or five hours a day out of the 24.

Q. You state it took the “Kerr” usually about 24 days to go up river carrying a barge?

A. Yes, sir.

Q. That is making the allowance for the ordinary stops for fuel? A. Yes, sir.

Q. And that is assuming that she has fuel arrangements made along the river in advance?

A. Yes, sir.

Q. If, after fuel arrangements in advance have been made, you come to a woodyard and find that some other boat has taken your fuel it takes a longer time?

A. Yes, sir, if you happen to be out of wood; of course, you may make another woodyard.

(Testimony of J. B. Douglas.)

Q. When you estimated 24 days carrying a tow you were figuring on the boat having wood at the various woodyards?

A. Yes, sir, we generally have wood all along the river.

Q. You weren't figuring on having to stop to cut wood? A. No, sir.

Q. You spoke of the "Kerr" going through in 14 days without any stops; no boat goes through without stops for fuel, does it? A. No, sir.

Q. You are not speaking of a case where she had a tow?

A. She can go up in fourteen days without a tow.

Q. You don't mean that she could go from St. Michael to Dawson carrying a tow and stopping at the woodyards for fuel? A. No, sir.

Q. That would take about 24 days?

A. Yes, that is giving her lots of time.

Q. And supposing she is not delayed any by getting on bars?

A. With a tow they give a boat 24 days and she is supposed to make it in that time.

Q. And if she gets stranded and loses 6 or 8 days—

A. Well, of course, that is different.

(Testimony of J. B. Douglas.)

Re-redirect Examination.

Q. (Mr. BRONSON.) How far did you take that tow? A. To Fort Yukon.

Q. How far is that below Circle?

A. Ninety miles.

Q. I understand you to say that this estimate of 24 days is a good liberal allowance for going up, including her stops for wood and so forth that occur in going up?

A. Yes, sir, that is giving her plenty of time.

Re-recross-examination.

Q. (Mr. BOGLE.) Quite a number of these steamers carry tows up the river?

A. Yes, sir, the "Robert Kerr" does, the "Louise" does, and the "Cudahy," and the "Custin" and the "Oil City"—a lot of those boats.

Q. A majority of them?

A. Yes, I guess about half the boats on the lower river.

(Testimony of F. R. Wall.)

Seattle, Wn., August 29, 1905, 2 o'clock P. M.

Continuation of proceedings pursuant to agreement.

Present: Mr. BOGLE, Proctor for Libelant.

Mr. BRONSON, Proctor for Claimant.

F. R. WALL, a witness called on behalf of the respondent, being duly sworn, testified as follows:

Q. (Mr. BRONSON.) You have recently been on the Yukon River, Mr. Wall? A. Yes, sir.

Q. Did you take any photographs of the steamer "Kerr" and the barge "Peter"? A. Yes, sir.

Q. I hand you Respondent's Exhibit No. 1, for identification, and ask you what that is and who took it?

A. I took this about the 31st day of July or the first day of August, in Dawson, in the forenoon of the day. The "Kerr" had recently arrived, that day or the day before, in Dawson, and was loaded; none of the cargo had been discharged at the time I took the photograph.

Q. That is a photograph of the steamer "Kerr"?

A. That is a photograph of the forward part of the steamer "Kerr" and the aft part of the barge "Peter," which the "Kerr" brought up with her on that voyage.

(Testimony of F. R. Wall.)

Q. On which voyage?

A. The voyage that ended at Dawson on the 31st day of July or the first day of August.

Q. What relation had the barge "Peter" to any previous voyage in question in this case?

A. It was the same barge that the "Kerr" had with her, so I was informed, at the time she made the trip in 1903.

Q. The trip, the subject matter of which is this case?

A. Yes, sir. This photograph shows the barge just ahead of the "Kerr." The "Kerr" is the one that has the words "refrigerator" "P. C. S. Co." on. The barge is just ahead of the "Kerr," and only the aft end of the barge shows in the photograph. The wood, on the left-hand, extreme left of the photograph was piled up on the aft part of the barge "Peter," and then comes a little space and the wood begins to be piled up on the forward part of the steamer "Kerr, so that the barge was right in front of the steamer "Kerr." The line that goes across, the line of the barge is the edge of the wharf, or the edge of another barge that was inside of the "Kerr" and her barge. The flat cars with "T. M. R." were on another barge just on the port side of the steamer "Kerr." And these uprights on the "Kerr" on each side of the smokestack, one of

(Testimony of F. R. Wall.)

them cutting the pilot-house and the other one standing up, and the second upright to the left of the smokestack were the spars and tackle that is found on all of the vessels plying on the lower river below Dawson, and they are used for the purpose of prying the vessel off or over shoal water; and each vessel that I saw plying on the lower river was fitted up in the same way and also with a wire cable for hauling off the shoal places. I saw a great many vessels while I was there that did ply on the lower river below Dawson; a great many plying between St. Michael and Dawson.

Mr. BRONSON.—I offer identification No. 1 in evidence.

(Paper received and marked Respondent's Exhibit No. 1, filed and returned herewith.)

Q. I hand you Respondent's Exhibit No. 2 for identification, and ask you if that is also a photograph of the steamer "Kerr" and barge "Peter," taken by you?

A. Yes, sir. This photograph shows the whole of the barge "Peter," as much of it as could be seen from the wharf where I stood when I took the photograph, showing the barge ahead of the steamer "Kerr," and also shows a good part of the steamer house. These were all taken at the same time, practically. The barge on this photograph had been

(Testimony of F. R. Wall.)

taken after she had discharged most of her cargo; they had not then begun discharging the "Kerr." This represents the position they were in when they came from down the river.

Mr. BRONSON.—I offer this identification in evidence.

(Paper marked Respondent's Exhibit No. 2, filed and returned herewith.)

Q. I show you Respondent's Exhibit No. 3 for identification, and ask you what that is?

A. This shows the hull of the "Peter," the barge referred to, and it shows a little bit of the wood piled up on the aft part of the barge, the barge being right ahead of the steamer.

Mr. BRONSON.—I offer this in evidence.

(Paper marked Respondent's Exhibit No. 3, filed and returned herewith.)

Q. What are these letters that I hand you?

A. There is one of them on which I made a memorandum on, which is not a copy; it is just a memorandum of a statement made by Bryant.

Q. This last statement, just that part of it?

A. Yes, it is just a memorandum of a statement made by Bryant at the time.

Mr. BRONSON.—I will make a formal demand for the production of these letters; then if you pre-

(Testimony of F. R. Wall.)

fer to furnish the letters themselves they can be used; if not, I will identify these and let it rest at that.

Mr. BOGGLE.—You have got the correspondence between Bryant, Captain Smith and others down the river; I do not know anything about that.

Mr. BRONSON.—You probably would rather have your own file for examination than have these introduced in evidence in the first instance. I am agreeable to have these identified and let them rest until you produce the others, if you care to.

Mr. BOGGLE.—Do I understand these are copies of letters that were produced on demand in Dawson?

Mr. BRONSON.—He did not give copies of letters. He made a demand and he allowed an examination of them and Mr. Wall took copies himself.

A. I would say that I went to Bryant's office, after I had presented the demand, and he told me to come around some evening, and I went around there and he took his letters and files and documents and hands me out these that I made a copy of, and said that they were correct copies where they were not originals they were correct copies that had been sent to the parties to whom they were addressed and mailed. He also said that the home office had duplicates of everything that they had up there.

(Testimony of F. R. Wall.)

Mr. BOGLE.—You had better make your proof, Mr. Bronson.

Mr. BRONSON.—I make formal demand on the libelant here to produce the originals and the letter press copy in the hands of the libelant, of the letters, copies of which I hand to Mr. Wall, and which I will ask him to identify by dates, and if the demand is not complied with, I shall offer in evidence the copies which I now hand him, and ask him to identify.

Q. Will you identify the letters which I hand you, state where you got them and what they were taken from.

A. Well, all of these letters and telegrams that I have here and which you offer in evidence, are copies made by me of documents given to me by Mr. Bryant, in Dawson.

Q. What Mr. Byrant is that?

A. Charles Bryant is his name; he is the manager in Dawson of the Pacific Cold Storage Company. The first telegram is dated September 21, 1903, is a copy of a telegram shown me by Bryant. Some of these telegrams were in cipher. They had been translated when they were offered me, and Bryant told me that the translation was a correct translation. The same applies, I think to the telegram dated

(Testimony of F. R. Wall.)

Dawson, September 24; and the same as to the extract from a letter of September 8th, 1903, and addressed to Captain Smith. The same as to copy of letter dated August 20, 1903, addressed to E. W. Smith, Ss. "Robert Kerr," Fort Gibson, Alaska. The same as to letter dated Dawson, December 19, 1903, addressed to E. W. Smith, steamer "Robert Kerr," Circle City, Alaska. The same as to letter dated November 6, 1903, addressed to Pacific Cold Storage Company, Tacoma, Washington. The same as to letter dated November 11, 1903, addressed to Pacific Cold Storage Company, Tacoma, Washington. The same as to letter dated November 10, 1903, addressed to Pacific Cold Storage Company, Tacoma, Washington. The same as to telegram dated Eagle, Alaska, October 20, 1903, addressed C. B. Bryant, Forty Mile. The same as to letter, dated November 10, 1903, Pacific Cold Storage Company, Tacoma, Washington. The same as to letter dated November 7, 1903, addressed to Pacific Cold Storage Company, Tacoma, Washington. The same as to telegram dated October 3, 1903, to the Pacific Cold Storage Company, Tacoma, Washington. The same as to telegram dated Rampart, Alaska, September 21, 1903, addressed to Pacific Cold Storage Company, Dawson, Y. T. That is the one I made a memorandum on. The same as to telegram dated

(Testimony of F. R. Wall.)

Eagle, Alaska, October 7th, 1903, addressed to Pacific Cold Storage Company, Dawson, Y. T. The same as to telegram dated Eagle, Alaska, October 14, 1903, addressed to Pacific Cold Storage Company, Dawson. Now, Mr. Wall, the copies which you have identified here are these letters and telegrams, copies of the letters and telegrams given you by Mr. Bryant in Dawson, which he stated to be part of the correspondence between the Pacific Cold Storage Company and some of its shipmasters and its Tacoma office?

A. Yes, and its agents; letters and telegrams.

Q. They were part of the records then preserved by the company, were they?

A. I got them in the company's office, and Bryant gave them to me as manager of the Cold Storage Company, and stated they were part of the records of the Pacific Cold Storage Company, and they were true and correct copies, where they were not originals.

Mr. BRONSON.—We offer the copies in evidence.

Mr. BOGLE.—The libelant objects to these letters and telegrams and each of them, on the ground that they are incompetent, irrelevant and immaterial.

(Papers marked Respondent's Exhibits Nos. 4, 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H, 4I, 4J, 4K and 4L, filed and returned herewith.)

The following are the exhibits above named:

(Testimony of F. R. Wall.)

Respondent's Exhibit No. 4.

(Extract from letter dated Sept. 8, 1903, and addressed to Capt. E. W. Smith.)

We are sorry to hear of your delay at St. Michaels, but am in hopes to see you arrive by the 20th.

Kindly keep me advised as to your progress up the river.

Yours truly
PACIFIC COLD STORAGE CO.,
CHAS. S. BRYANT,
Manager.

Respondent's Exhibit No. 4A.

(Telegram.)

Dawson, Sept. 24th, 1903.

Davis Bunyan, Eagle, Alaska.

Advise immediately on arrival of boat's latest reports from Kerr.

PACIFIC COLD STORAGE COMPANY.

Respondent's Exhibit No. 4B.

(Telegram.)

Dawson, Sept. 21st, 1903.

Pacific Cold Storage Company, Tacoma, Wash.

Kerr passed Rampart 14th. Should report Eagle any minute.

BRYANT.

(Testimony of F. R. Wall.)

Respondent's Exhibit No. 4C.

(Letter.)

Dawson, Y. T., August 20th, 1903.

Captain E. W. Smith, Ss. Robert Kerr, Fort Gibbon,
Alaska.

Dear sir: Not knowing what instructions you had prior to the time I took charge of the office here, I want to say that it is of vital importance that the steamer get here with her second cargo.

Of course we want the barge Peter brought along if it is possible to do so, and at this date I know of no reason why I should not expect both to arrive in due time but if for any reason you find that you can get to Dawson with the Kerr but cannot get here if you hung on to the barge, by all means bring the steamer.

I suppose you are leaving St. Michaels at about this date, and as the weather is still very warm here I have no doubt you will have plenty of time and plenty of water and that we will hear you took your horn about September 18th.

Yours truly,

PACIFIC COLD STORAGE CO.,

R. J. D., Manager.

(Testimony of F. R. Wall.)

Respondent's Exhibit No. 4D.

(Letter.)

Dawson, Y. T., Dec. 19th, 1903.

Captain E. W. Smith, Steamer Robert Kerr, Circle City, Alaska.

Dear sir: We have this day closed a contract with H. N. Ford for the freighting of on or about 50 tons of meat and butter, now on board the steamer Robert Kerr at Circle, to Dawson. My object in making this contract read 50 tons, on or about, is that I am not positive just what quantity of mutton is not in first-class condition. In making up this load for Mr. Ford, we are desirous of having all the mutton that is in first-class condition loaded first, then load all the beef; with the exception of what you will require or can dispose of at that place. The butter can also be sent along if you cannot dispose of same for at least 35 cents or more for cash; the veal, loins and ribs can also be sent, if you find that Ford is able to carry that quantity, but in any event try and make up his load of fifty tons; and if you can find that you can take more, load up with what is most convenient, reserving enough for your own use, and what you are positive you will be able to dispose of there, and of course if Norton has not taken the full amount of meat for Gibbon, reserve that also.

(Testimony of F. R. Wall.)

After loading Ford, if possible, I wish you would make a check of each commodity on board, that is the number of pieces of each, and send same to this office at once, with a complete statement of all meats sold and used by the mess since the Kerr went into winter quarters. This should give us a complete check of the Kerr's cargo.

Yours very truly,
PACIFIC COLD STORAGE CO.,
—————, Manager.

Respondent's Exhibit No. 4E.

November 6th, 1903.

Pacific Cold Storage Co., Tacoma, Wash.

Gentlemen: Thomas Newman left Yukon crossing on the morning of Oct. 20th with 90 head of cattle, balance of September 23rd shipment wrecked at 30 Mile River; after encountering many difficulties in crossing streams and getting hay for stock, he succeeded in reaching Dawson on the evening of the third with 88 in fairly good condition considering the time en route from Whitehorse.

In regard to the two short, one was dressed on the trail (remainder of paragraph gives disposition of two head).

LaFrance and Oliver arrived on the evening of the 2nd with 210 head, having lost some 31 head be-

(Testimony of F. R. Wall.)

tween here and Whitehorse. I also understand that they have a number of cattle which they are forced to dress at Selkirk and will have to haul same over the trail. They also dressed 200 sheep and 180 hogs at Selkirk. It is reported that Kastner left Selkirk on the morning of the 5th with dressed sheep and hogs on a barge, and it is very doubtful about his being able to reach Dawson, on account of the heavy ice running on the river; the balance of the Kastner and LaFrance shipment is so scattered between here and Whitehorse that it is almost impossible to tell just what they have got, but I am in hopes of getting accurate figures in a few days.

As far as I have been able to ascertain the date, they loaded 74 head of cattle on the Crimmins out of the shipment of 200 head made from Whitehorse. The balance of the 200 head were dressed at Selkirk. They have since landed one barge load of the dressed beef in Dawson, possibly thirty head, leaving a balance of 100 head still up the river and the balance 36 head of the total shipment of 450 head was lost between here and Whitehorse.

Yours very truly

PACIFIC COLD STORAGE CO.,

—————, Manager.

(Testimony of F. R. Wall.)

Respondent's Exhibit 4F.

November 11th, 1903.

Pacific Cold Storage Co., Tacoma, Wash.

Gentlemen: Please find enclosed list of Dawson shipments left at Whitehorse at the close of navigation, which may be of interest to you. This list does not include the freight which was left on the lower river.

You will note by the enclosed list that there is 11,465 bales of hay and 1537 sax of oats; this will no doubt cause a shortage of hay here this winter, and in all probability the price will go as high as 15 cents per pound.

I regret to say that we have barely enough for our own stock.

Very truly yours,
PACIFIC COLD STORAGE CO.,
—————, Manager.

Respondent's Exhibit 4G.

Nov. 10th, 1903.

Pacific Cold Storage Co., Tacoma, Wash.

Gentlemen: I am just in receipt of your letter of October 16th in reference to my telegram reading as follows: "Wintering Kerr Circle, Barge Fort Yukon. Hundred tons meat on Lightning may not reach Dawson. I expect to read Dawson Saturday."

The telegraph operator evidently got the message somewhat confused, as my telegram read as per

(Testimony of F. R. Wall.)

above; the meaning which I wish to convey to you, was that the Kerr was wintering at Circle. Barge in winter quarters at Fort Yukon and that I had one hundred tons on Lightning; and at that time it looked doubtful as to whether the Lightning would be able to reach Dawson on account of the heavy ice running in the river; I expect her then to reach Dawson Saturday. On my arrival in Dawson I telegraphed you the exact condition of affairs and no doubt you received the information you refer to in your letter. I am still anxiously waiting for a reply to this telegram, and understand that my wire was delayed several days on account of the wires being down, but am in hopes of hearing from you to-day.

Yours very truly,

PACIFIC COLD STORAGE CO.,
—————, Manager.

Respdonent's Exhibit 4G1.

(Telegram.)

Eagle, Alaska, Oct. 20th, 1903.

C. E. Bryant, Forty Mile.

Lightning at Washington Creek, thirty tons aboard balance in cabin twelve Kerr crew arrived. Smith remained. Have wired Consuls if can pay crew here under circumstances.

DAVIS RUNYAN.

(Testimony of F. R. Wall.)

Respondent's Exhibit No. 4H.

Nov 10th, 1903.

Pacific Cold Storage Co., Tacoma, Wash.

Gentlemen: I am in receipt of telegram from our agent at Eagle, reading as follows: "November third, ice moved Lightning half mile stopped in channel, Smith expects to leave forth." From this telegram I would infer that the ice must have jammed above the Lightning and in breaking forced her down stream half a mile. I have no further reports from the lower river, and do not know the condition she is in at the present time. Smith arrived in Eagle yesterday on his way to Dawson, and on his arrival here I will be able to give you more information regarding the above. The ice has been running an unusually long time this year, and I am anxious to hear as to the condition of the Kerr, although I have no fears as to her safety, as I consider she is in much safer winter quarters than any boats wintering between here and Circle, but I will feel easier at mind when the ice stops running and I hear that she is frozen up for the winter.

Yours very truly,

PACIFIC COLD STORAGE CO.,

—————, Manager.

(Testimony of F. R. Wall.)

Respondent's Exhibit No. 4I.

Nov. 7th, 1903.

Pacific Cold Storage Co., Tacoma, Wash.

Gentlemen: The condition in Dawson at the present time is a serious one, owing principally to our fate in getting shipments through, and the non arrival of the Kerr, my plans for the winter have been completely upset. I figure that with the arrival of the Kerr that we could have broken Kastner's contract as they could not have made payment on account of the heavy expense up river. When I left on October 4th for the Kerr everything looked favorable to my returning in not more than 12 days, and I left instructions to hold prices at 20 cents so as to force Nicols who arrived with 150 head and Gardner with 70 head, to sell at a low rate, and if possible buy Nicols entire shipment, if same was in good condition, in order to make up our shortage in live stock shipment. As you know I was away 21 days and during my absence my instructions were carried out. If I had been on the ground myself I would have probably have raised the price of beef ten days earlier than we did, but could not have raised it to the price as recommended by the home office without instructions from you. The raising of the price at that time has no doubt caused a number of small shippers to place orders outside.

I have thought seriously of your recommendation

(Testimony of F. R. Wall.)

of forcing Kastner and LaFrance to turn over their stock or the greater part of it at actual cost, or make an agreement with them to take over their entire stock and hold up the prices; as the situation is now I would not advise doing this as their shipment of 450 head has cost them far more than we could drive cattle in for during the winter, then again if we should take over their stock and set the price, the smaller shippers would be cutting into the market.

From the information which I have which confirms the information of Bartsch, in a letter to you from Vancouver, Kastner & LaFrance have some 350 head of cattle contracted to butchers here at from 20 to 22½ cents. The question now is, will they fill their contracts at that price, if they do they are going to meet with a heavy loss. I have been watching this very closely the past few days, and find that in some cases that they are filling their contracts, to just what extent it has been hard to determine as yet.

Troughton, LaFrance and Oliver are here at the present time and Kastner is due tonight. It has just been reported to me that Troughton is on the creeks selling meat at less than thirty cents. We are trying to get an average of forty cents on the creeks for beef and thirty cents in town, but I find that they are underselling us both in town and on the creeks; and I am thinking seriously of reducing the price to at least meet theirs, as there is no doubt in my mind

(Testimony of F. R. Wall.)

that their object is to unload this band of cattle and get their money out as soon as possible in order to meet their obligations, expecting to make further shipments over the ice this winter to supply butchers who are contracted with them.

According to my wire of October 27th, I think it advisable that we ship 100 head of selected steers, to dress at least 725 pounds on arrival here, and 300 sheep that will dress 30 pounds or better on arrival here; this shipment should be started as early as possible.

With our feed on the trail we should have no difficulty in getting this shipment through in good condition at a cost of not more than 25 or 26 cents per pound dressed, as the cattle can be driven ahead to break a trail for the sheep. I would suggest that a team with a large sleigh come through from Whitehorse with the sheep so that if any give out enroute they can be dressed, burlaped and thrown on the sleigh. I would suggest that a similar shipment be made in January; with these two shipments and the Lightning cargo we could be fairly well supplied.

We enclose herewith approximate memo of the stock on hand Oct. 31st and also list of the cargo on board of the Lightning which we will be forced to haul in order to save same.

(Testimony of F. R. Wall.)

There is one or two courses to pursue here at the present time. We have either got to make an agreement with our competitors to hold up the prices which in my opinion only encourages them in making further shipments or we will have to commence to fight them at once, as there is no doubt in my mind but that Kastner & LaFrance would not have been in a position that they are today if it had not been for the Pacific Cold Storage Co. and as you know my policy is that we should run independent of all competitors. I would suggest that we make no agreement with any of them but sail our own ship, of course this is a matter for you to decide and should like to have you wire me on receipt of this letter your decision in the matter.

Yours very truly,
PACIFIC COLD STORAGE CO.,
—————, Manager.

Respondent's Exhibit No. 4J.

(Telegram.)

Oct. 3rd, 1903.

Pacific Cold Storage Company, Tacoma Wash.

In compliance with your letter Sept. 17, arrival Robert Kerr will decide. Competitors of ours heavy expense delay Whitehorse.

BRYANT.

(Testimony of F. R. Wall.)

Respondent's Exhibit No. 4K.

(Telegram.)

Rampart, Alaska, 29 Sept. 1903.

Pacific Cold Storage Co., Dawson, Y. T.

Steamer Kerr aground fifty miles below Circle City. Will not get to Dawson unless river should rise. Send a light steamer with barge for cargo. No water on flats.

Respondent's Exhibit No. 4L.

(Telegram.)

Eagle, Alaska, 7 Oct., 1903.

Pacific Cold Storage Co., Dawson, Y. T.

Cudahay reports Kerr twelve miles below Circle. Will get through with assistance.

DAVIS RUNYAN.

Respondent's Exhibit 4M.

(Telegram.)

Eagle, Alaska, Oct. 14, 1903.

Pacific Cold Storage Co., Dawson.

Susie reports Lightning Circle with Kerr Circle eleventh. Later news tonight. Lots of ice.

DAVIS RUNYAN.

Mr. BRONSON.—I think you stated you had no objection to my using copy of telegram sent to Bryant by yourself and the answer from Bryant?

(Testimony of F. R. Wall.)

Mr. BOGLE.—None whatever. (Examining copies.) This first one was signed by me.

Mr. BRONSON.—Respondent offers in evidence copy of a telegram admitted to be a copy, dated November 9th, 1903, signed by W. H. Bogle, directed to Charles E. Bryant, Dawson, Y. T. Also the answer to said telegram, dated November 9, Dawson, Y. T., to W. H. Bogle, signed by Bryant. It being admitted that these exhibits are copies of telegrams which passed between the parties purporting to have sent the same.

(Papers marked Respondent's Exhibits Nos. 5 and 6, respectively, filed and returned herewith.)

Respondent's Exhibit No. 5.

Nov. 9, 1903.

Chas. E. Bryant, Dawson, Y. T.

How many tons cargo aboard Kerr? Give exact location. What crew remains aboard? Is she safe when ice breaks. How many tons aboard barge. Give exact location. What crew aboard. Is she safe when ice breaks. How many tons aboard Lightning. Give exact location. What crew aboard. Is she safe when ice breaks. How much cargo cached and where. From what points can cargo be sledged to Dawson during winter, and at what cost from each point. Wire answer each question.

W. H. BOGLE.

(Testimony of F. R. Wall.)

Respondent's Exhibit No. 6.

Dawson, Y. T. Nov. 9.

W. H. Bogle, Seattle.

Eighty tons frozen meat aboard Kerr. Slough front Circle. Lee of island well moored before balance crew left mate engineer and two men aboard Captain Smith considers safe when ice breaks. Two hundred twenty-nine tons aboard barge slough about five hundred yards from Fort Yukon well moored one man in charge. Is considered safe when ice breaks. Thirty nine tons aboard Lightning Washington creek seventy five miles below Eagle. Captain aboard Considered safe when ice breaks. Seventy tons cached opposite Washington. Can haul Lightning and cached cargo Dawson twelve half cents pound and Kerr cargo fifteen.

BRYANT.

Mr. BRONSON.—Respondent desires to renew demand of the libelant for the production of the ship's log and the engineer's log of the steamer "Kerr" upon the trip from St. Michael to Dawson, or to such point of the river, Circle City or above there as the steamer reached on her last trip, during the season of 1903, being the trip when the policy was in force which is being sued on in this action.

(Testimony of F. R. Wall.)

Mr. BOGLE.—In response to that, I do not recollect that Mr. Bronson has ever heretofore made a demand for the production of these logs. I am under the impression that the log of the steamer is in the office of the company at Tacoma, and if so, I will produce it at any time or place that Mr. Bronson desires. I have no information about the locality of the engineer's log, nor whether one was kept on the steamer or not. I will make inquiries for that log and if it is accessible it will be produced at any time and place that Mr. Bronson desires. If, however, there is such a log in existence, and it was on the steamer in Alaska at this time, it will be impossible to produce it without further material delaying of the final hearing of this case, and I will not consent to the delay of the trial of the case for the production of that document, the demand being made at this late day.

Mr. BRONSON.—A demand was made up there and it was included in the interrogatories which were served upon you along last spring.

Q. Mr. Wall, did you serve upon Mr. Bryant a demand for the production of certain documents, books and papers, including the log of the vessel and the log of the engineer of the steamer "Kerr?"

(Testimony of F. R. Wall.)

Mr. BOGLE.—I object. If the notice was in writing, the written notice should be produced.

Mr. BRONSON.—I will send for it and get it.

Q. Upon whom did you make that demand?

A. Mr. Charles Bryant, the manager of the Cold Storage Company and prior to that time I made a demand on the taking of testimony for the production of the log-books, when Mr. Bryant was present, and also when the counsel representing the libelant were present in taking such testimony.

Q. Is the instrument which I now hand you, which I will have marked for identification (marked Respondent's Exhibit No. 7 for identification), the demand which you served on Mr. Bryant?

A. Yes, sir; that is a true copy of the one that was served.

Mr. BRONSON.—I offer this paper identified by the witness, in evidence.

(Paper marked Respondent's Exhibit No. 7 filed and returned herewith.)

Q. Was that demand complied with, so far as the production of the logs were concerned, or either of them? A. No, sir, it was not.

Q. Or as to any other documents than the copies of the letters which you testified to this afternoon?

A. No, it was not. These copies of the letters I

(Testimony of F. R. Wall.)

got before this subsequent demand was made. It was in response to the prior demand.

Q. Then there was no compliance with the demand made? A. None at all.

Cross-examination.

Q. (Mr. BOGLE.) Are you one of the attorneys for the respondent company in this case?

A. Not of record. I went up there in the interests of the respondent to represent it in the taking of testimony and ascertain all I could in regard to the case.

Q. You are by profession an attorney?

A. I am.

Q. And when you speak of the demand upon the solicitor representing the libelant in the taking of testimony at Dawson, to whom do you refer?

A. His name was Ridley who was looking out for the libelant in the taking of testimony, all that was taken while I was there. He was a member of the firm of Paturro & Ridley, at Dawson.

Q. He was merely examining and cross-examining witnesses? A. Yes, sir.

Q. Referring to the copy of demand made by you for the production of certain telegrams, letters and documents (exhibit 7) do I understand that this was served upon Mr. Bryant, at Dawson? A. Yes

(Testimony of F. R. Wall.)

Q. It has never been served upon the Pacific Cold Storage Company at its office in Tacoma, nor upon the proctor of record in this case?

A. As to that I know nothing; I only know that I served it upon Mr. Bryant.

Q. It has never been served by you?

A. Never been served by me.

Q. And, so far as you are concerned, none of these papers were ever asked for from the company except after you arrived in Dawson, and you made demand upon the manager at Dawson?

A. My knowledge extends only to the demand made on Mr. Bryant in Dawson, the manager of the cold storage company.

Q. Is this the demand in response to which the telegrams and letters you have produced, were furnished to you?

A. No, sir, it was not; this was made subsequently; the one upon which the letters and telegrams were furnished was served by me upon Mr. Bryant, not very long after I got to Dawson. Some-time in June.

Q. At what time was the notice that you have here produced, served upon Mr. Bryant?

A. Upon the 13th of August, of this year.

Q. The first paper called for is a telegram or telegrams, sent by the master of the "Robert Kerr"

(Testimony of F. R. Wall.)

to the libelant herein or its agent, during the latter part of September, 1903, in which it was stated, in substance or in effect, that said steamboat was in safe winter quarters. Did not Bryant inform you there was no such telegram or telegrams in existence? A. No, he did not.

Q. Have you ever seen any such telegrams?

A. I think the telegram referred to has already been introduced or a copy of it, here. I think that was the telegram referred to in your demand.

Q. Well, then, if these papers had already been produced upon demand, why did you serve this notice for a second production?

A. I know nothing of the production of this paper here.

Q. You refer to the last telegram, signed by me, to Mr. Bryant and his answer?

A. Yes, sir, these two here. (Exhibits Nos. 5 and 6.)

Q. Your second demand is for the letter or letters sent by the libelant from the Dawson office to the Tacoma office during July and August or September, 1903, in which it was stated in substance or effect that it would be necessary to get said steamboat to Dawson before the close of navigation on the Yukon River in 1903, in order that the boilers of said steam-

(Testimony of F. R. Wall.)

boat might be put in a seaworthy condition. Had you ever seen any such letter or letters?

A. No.

Q. Did you ask Mr. Bryant if there was such letter or letters in existence? A. Yes, sir.

Q. Did he say there was any such letter?

A. He said he would look over his papers and see if there was, but he never produced them.

Q. Did he report there was no such letter?

A. No.

Q. What answer did he give you?

A. He said he would look over his papers and give me all the letters that related—all the correspondence and he gave me such letters as he picked out, and those I made copies of.

Q. And then the letters that you have produced were furnished after you served this demand?

A. No, they were furnished prior to that. In regard to that demand in there, he never made any response to that.

Q. When he furnished you the letters and telegrams which you have produced, did he state these were all the letters and telegrams relating to the matters covered by this demand?

Mr. BRONSON.—I object to that.

A. These were furnished before that demand?

(Testimony of F. R. Wall.)

Q. Did he state that was all the correspondence referring to the matter of the previous demand?

Mr. BRONSON.—I object to that as not proper cross-examination.

A. No, he did not in answer to the demand. He produced from his files certain letters and telegrams which he handed to me, all of which I copied that I thought bore upon the subject matter of the suit, but he did not say these were all or that there might not be more.

Q. You refer to the letter or letters written in June, July, August or September? Is it not a fact that you made this demand simply to draw forth all of the correspondence between the Dawson office and the Tacoma office relating to the steamboat "Kerr"?

A. All the correspondence relating to the subject matter of this suit, yes.

Q. You had no information that there was any matter passed between these offices stating that it was necessary for the "Kerr" to reach Dawson during the fall of 1903, nor that her boilers might be put in a seaworthy condition, had you?

A. Well, I had information from some of the former employees of that company that such correspondence had passed, upon which I based that demand; I had no knowledge, no personal knowledge.

Q. Employees on board the steamer "Kerr"?

(Testimony of F. R. Wall.)

A. No.

Q. Did you take the testimony of these employees? A. No.

Q. Did you have any information that there was any letter in existence stating that twenty per cent of the cargo of the steamer "Kerr" was shipped from Tacoma on the "Elihu Thompson" in an unsound, unsafe and unfit condition?

A. I had information from the same source that lead me to believe that there was such correspondence. I wanted to see if there was. Some one who had said he had seen the correspondence.

Q. Had you ever seen the log-book, any log-book kept by the engineers' department on the "Kerr"?

A. No; the chief engineer testified that there was such a log-book kept.

Q. Where did you get the information upon which you based the statement in this demand as to what was the substance of the entries in that log-book?

Mr. BRONSON.—I object as not proper cross-examination.

A. I got it from conversing with the firemen who had been on the "Kerr," and some of it, I think, from the assistant engineer who had been on the "Kerr."

Q. As to the entries on the log-book?

A. As to about the substance of what the entries were.

(Testimony of F. R. Wall.)

Q. Did not the engineer or assistant engineer testify in the case?

A. The chief engineer testified, yes, and so did the assistant engineer.

Q. The assistant from whom you got the information testified?

A. The substance; he testified after this demand was made. I think his testimony was after the demand was made; yes, it was.

Q. What do you mean by the ship's log-book and the official log-book of the said steamboat?

A. I mean what it says. The official log required to be kept by law, and the ship's log-book kept by every ship.

Q. Have you any information that they kept two logs besides the engineer's log?

A. No, I had no information other than I supposed prima facie they complied with the law.

Q. Did you base the allegations of this demand as to what was contained in that log upon any information that you had or simply an inference as to what you might find in it?

A. The information that I got from the members of the crew as to what was shown in the engineer's log and the ship's log; I supposed that they would be the same in the official log, if they were complied with.

(Testimony of F. R. Wall.)

Q. Did members of the crew testify what the entries in the log were?

A. No, as to what occurred on the voyage.

Q. Were you not informed, either by Bryant or Mr. Ridley, that the log-book called for was not at Dawson at the time you called for it? A. No.

Q. Was the steamer "Kerr" there at that time?

A. The steamer "Kerr" arrived after I had made demand and the taking of testimony, but she was not there at the time.

Q. When did you leave Dawson?

A. I left Dawson on the 17th of August.

Q. You made demand on the 13th?

A. The 13th, yes.

Q. When did the steamer arrive?

A. The steamer arrived on the 31st of July, and left a few days after that.

Q. And she was not there at the time you made this demand?

A. No, but she arrived after I made the demand and the taking of testimony, but she had left before I made this demand of August 13th.

Q. I speak of the time you made a demand, this demand for the production of the two log-books?

A. I say I made a demand for the log-books in the taking of testimony.

Q. Where is that demand?

(Testimony of F. R. Wall.)

A. It is in the record in the taking of testimony. After that demand was made the "Kerr" arrived and she then departed down the river before this demand was made, which was made on the 13th of August.

Q. She was not in Dawson nor accessible to Mr. Bryant at the time you made either of the demands for the production of the log-books?

A. Oh, she was—

Q. Answer my question, please.

A. No, she was not in Dawson at the time either demand was made, but she arrived not very long after the first demand was made in the taking of testimony.

Q. While she was in Dawson, did you ask Bryant to produce to you either of the logs?

A. No; I had already made the demand.

Redirect Examination.

Q. (Mr. BRONSON.) Did you, in talking with the employees, as you have testified on cross-examination, ascertain or learn that there had been such entries as are mentioned and specified in the demand?

Mr. BOGLE.—I object to counsel attempting to bring out hearsay evidence; it is not rebuttal. The

(Testimony of F. R. Wall.)

cross-examination being merely to ascertain whether he made demand for a drag net production of papers, or whether he made it from information he had.

A. I learned that certain incidents happened on the voyage and from that concluded that if the law had been complied with that there had been entries of these incidents made in the log-books. That is what I based the demand on.

Q. Was the incidents to which you have testified, those specified or mentioned in the demand?

A. Yes, they related to the incidents specified in the demand.

Q. (Mr. BOGLE.) You say that you learned from persons who were on the boat that certain incidents had occurred on the voyage and you assumed that they had been entered in the log-book. Did you introduce the witnesses who were cognizant of their own knowledge, of the incidents you refer to, and take their testimony?

A. No, because I had no way of compelling their attendance.

Q. (Mr. BRONSON.) They were employees of the Pacific Cold Storage company?

A. They had been. They were not all of them. There were none of them at the time in the employ of the Pacific Cold Storage Company.

(Testimony of F. R. Wall.)

Mr. BRONSON.—I will make another demand for its production.

(Testimony of witness closed.)

Further hearing adjourned to be taken by agreement.

United States of America,
Western District of Washington,
Northern Division.

I, A. C. Bowman, United States Commissioner for the Western District of Washington, do hereby certify that:

The annexed and foregoing transcript of testimony and proceedings, from page 1 to page 310, inclusive, was taken before me at the times and in the manner therein specified.

Each of the witnesses therein named, before examination, was by me duly sworn to testify the truth, the whole truth and nothing but the truth.

The signature of each of said witnesses to his testimony was duly waived by the parties, the testimony of said several witnesses to be received with the same force and effect as if signed by said witnesses.

The exhibits offered by the libelant, and filed and marked by Libelant's Exhibits "A," "B," "C," "D," "E," "El," to "44," "F," "G," "H," "I," "J,"

“K,” “L,” “M,” “N,” “O,” “P,” “Q” and “R,” and the exhibits offered by the claimant, and filed and “L,” “M,” “N,” “O,” “P,” “Q” and “R,” and the exhibits offered by the claimant, and filed and marked by me as Claimant’s Exhibits Nos. 1, 2, 3, 4, 4A to 4L, 5, and 6, are returned herewith.

I further certify that I am not proctor nor counsel for either party to said suit, nor interested in the result thereof.

In witness whereof I have hereunto set my hand and affixed my official seal, this 19th day of March, 1906.

A. C. BOWMAN,
United States Commissioner.

[Endorsed]: Testimony. Filed in the U. S. District Court, Western District of Washington. April 13, 1906. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

In the United States District Court, for the Western District of Washington, Northern Division.

No. 2822.

THE PACIFIC COLD STORAGE COMPANY,

Libelant,

vs.

THE ST. PAUL FIRE AND MARINE INSURANCE COMPANY,

Respondent.

Statement of General Average—Case of the Steamer
“Robert Kerr.”

Average as Suggested in Respondent's Brief.

[Endorsed]: Steamer “Robert Kerr.” Filed in the U. S. District Court, Western District of Washington. May 26, 1906. R. M. Hopkins, Clerk. H. M. Walthew, Deputy.

ABSTRACT FROM PROTEST.

Sept. 22d, 1903. The steamer “Robert Kerr” was stranded on a gravel bar in the Yukon River about fifty-five miles below Circle City, at the time said steamer was proceeding up the river with every prospect of arriving at Dawson in due time. As soon as said steamer was stranded and until she was released and floated, every possible effort was made to release said steamer from the bar; that at that time the water was falling steadily and when on the 28th Septem-

ber the steamer was released, the water had fallen so low as to make it impossible to get over the bar above without lightering the cargo; and that the said steamer was lying in the main channel of the river in a most dangerous place, if caught in the ice. For this reason it was necessary to lighter the cargo.

On arrival of the steamer "Lightning," with barge, the cargo was transferred in three trips of the "Lightning" and barge to Circle City and there distributed between the steamer "Robert Kerr," steamer "Lightning" and barge. After the said cargo had been divided and loaded the steamer "Kerr" was too deep to proceed to Dawson and for this reason was laid up at the mouth of slough, at Circle City, into which slough it is the purpose to put the str. "Kerr" as soon as the cargo is removed before the breaking up of the ice in the spring, thereby lessening the danger of a total of steamer and cargo, and lightering the steamer so as to allow her to be moved to a safer place. In case said cargo was not removed, thereby lightering the steamer and cargo. The cargo of the steamer "Lightning" and the barge would be a total loss if not removed from said steamer and barge, to Dawson, during the winter.

(Sgd) EDWIN W. SMITH, Master,
" CYRUS B. ATWELL, Engineer,
" ANDREW LARSEN, Mate,
" BARTON, Seaman.

DISBURSEMENTS.

Owners.

General
Average.

5.76	Dominion Gov't. Tel. Service: For telegrams to P. C. S. Co., Dawson, from Master of "Kerr" at Rampart.....	5.76	
	(Remainder of bill included)		
227.78	Dominion Govt. Service: For telegrams: Stinger at Eagle to P. C. S. Co.....		1.23
	P. C. S. Co. to Stinger.....		.95
	P. C. S. Co., to Runyan, at Eagle.....		1.30
	P. C. S. Co. Tacoma to Bryant.....		4.09
	Runyan Eagle to Radford, Dawson.....		.95
	P. C. S. Co., to Runyan, Dawson.....		.95
	P. C. S. Co. to Tacoma to P. C. S. Co., Dawson.....		6.39

General
Average.

Owners.

Smith, Rampart to P. C. S. Co., Dawson	10/10	2.34	
P. C. S. Co., Dawson to Smith	10/10	3.10	
P. C. S. Co., Dawson to Ruyuan	10/14	1.23	
P. C. S. Co., Dawson to Bryant	10/15	1.02	
P. C. S. Co., Dawson to Ruyuan	10/20	.95	
P. C. S. Co., Dawson to Ruyuan	10/20	1.79	
Ruyuan to P. C. S. Co.....	10/20	4.17	
Bryant to P. C. S. Co.....	10/21	.75	
P. C. S. Co. to Ruyuan.....	10/24	1.79	
Ruyuan to P. C. S. Co.....	10/26	1.09	
Remainder of bill,		193.69	
		<hr/>	227.78
			227.78

5.76 227.78

Forward.

233.54

	General Average.	Owners.
C. W. Nett, meals and horse feed.....		
	4.	
C. E. Bryant, expenses.....		
	54.	
	<hr/> 3142.70	3030.50
350. C. E. Bryant:	112.20	
For time Oct. 4th to Oct. 25th..		350.
2317.50. Capt. E. W. Smith:		
For mail carrier carrying telegram.	5.	
1 stove and pipe for Washington		
Creek	10.	
Crews wages, etc.....	2302.50	
	<hr/> 2317.50	2312.50
6049.24 Forward.....	<hr/> 122.96	<hr/> 5926.28

	General Average.	Owners.
6049.24	Forward. 122.96	5926.28
1899.47	Davis Runyan:	
	For telegrams to Bryant.....	7.99
	For telegrams to Secy. Treas. Wash.	6.48
	Remainder of bill, 1885.	
	<hr/> 1899.47	1899.47
22.95	Dominion Gov't. Telegraph Service:	
	For telegram, Dawson to Seattle...	22.95
42.85	N. A. T. & T. Co.:	
	For sundries, stove fittings and sup- plies to crew in charge of "Kerr".	42.85

	General Average.	Owners.
95.80 Pacific Cold Storage Co.:		
For supplies, same as above.....	95.80	95.80
5.66 Dominion Gov't. Telegraph Service:		
For telegrams:		
For'd. to P. C. S. Co., 3/16.....	.95	
Bryant to For'd Eagle, 3/21.....	1.44	
For'd.	<u>2.39</u>	
8115.97 Forward.....	<u>122.96</u>	<u>7987.35</u>

	General Average. 122.96	Owners. 7987.35
8115.97		
Dominion Gov't. Tel. Service		
(Contd.):		
Forward.		
For'd. Eagle to Bryant, Dawson,	2.39	
.....3/21	1.02	
Bryant to For'd.3/30	.95	
For'd. to Bryant.....3/30	1.30	
Fashion Shoeing Shop:		
For fitting up sleigh for freight-	5.66	5.66
ing	118.50	118.50
Tharp & Smith:		
For repairs and fittings on freight-		
ing outfit loaned, Ford.....	13.75	13.75
For Labor:		
5 men, 2 hrs. warehousing goods...	7.50	
Less Fords proportion	3.	
		4.50
8252.72	122.96	8129.76

	General Average.	Owners.
8252.72	122.96	8129.76
Forward		
10255.83. H. N. Ford:		
For first deliveries from Str. Light-		
ning, 12/15-12/19 78891 lbs. at		
13c.....		10255.83
5. A. M. Brown:		
For supplies and repairs on freight-		
ing outfit.....		5.
1.70 Dominion Gov't. Tel. Service:		
For telegrams:		
Ford, Eagle to Bryant.....		.95
Ford, 40 Mile to P. C. S. Co.....		.75
		<hr/> 1.70

	General Average.	Owners.
7574.88. H. N. Ford:		
For deliveries from Str. Kerr at Circle, 47343 lbs. at 16c.....	7574.88	7574.88
2.65. Dominion Gov't. Tel. Service:		
For telegrams:		
Ford, Eagle to P. C. S. Co	.95	
Bryant to Ford.....	.95	
Ford to Bryant75	
	<hr/> 2.65	
26092.78	<hr/> 122.96	<hr/> 25969.82
Forward.....		

	Forward	General Average	Owners.
26092.78		122.96	25969.82
73.50	Northern Commercial Co: For supplies for men in charge of meat at Washington Creek cache,.....		73.50
350.	Pattulla & Ridley: For legal services drawing con- tract Ford,.....		
	Same on Lightning and Kerr,...		150.
			200.
			<hr style="width: 50px; margin-left: auto; margin-right: 0;"/> 350.
	(Allow in G/A for drawing con- tract in connection with float- ing Str. Kerr).	200.	150.

	General Average.	Owners.
1.90 Dominion Gov't. Tel. Service:		
For Telegram P. C. S. Co. to Ford, Eagle.....	.95	
Ford to P. C. S. Co.....	.95	
	<hr/>	
10.50 For labor unloading meat from sleds,.....	1.90	1.90
5. For labor unloading meat from sled,.....	10.50	10.50
		5.
	<hr/>	
26533.68	322.96	26210.72
	<hr/>	<hr/>

	General Average	Owners.
26533.68	322.96	26210.72
Forward.		
12.40		
Dominion Gov't. Tel. Service:		
For telegrams to and from Ford.	12.40	12.40
4.75		
For labor unloading sleds.....	5.50	
Less paid by Ford.....	.75	
	<hr style="width: 100px; margin-left: auto; margin-right: 0;"/>	
	4.75	4.75
28655.05		
H. N. Ford:		
Deliveries to Dawson from Str.		
Kerr 66488 lbs. at 16¢.....	10638.08	
Deliveries to Dawson from		
Lightning 136843 lbs. at 13¢..	17789.59	
Deliveries to Eagle from Str.		
Kerr 36 lbs at 10¢.....	3.60	

	General Average.	Owners.
Deliveries to Eagle from Light- ning 1832 lbs. at 7¢.....	128.24	
Deliveries to Eagle from Kerr 233 lbs. at 10¢.....	23.20	
Deliveries to Eagle from Light- ning 1032 lbs. at 7¢.....	72.24	
	<hr/>	
11.25 J. J. Hibbard:	28655.05	28655.05
For duty of supplies sent to Kerr	11.25	11.25
2000. Ben S. Downing:		
For transporting crew to Str. Kerr	2000.	2000.
	<hr/>	
57217.13	322.96	56894.17
	<hr/>	<hr/>

	General Average.	Owners.
57217.13	322.96	56894.17
Forward		
For supplies used from Kerr car- go by crew.....	68.	68.
For supplies as above.....	146.97	146.97
For supplies as above.....	172.50	172.50
15.75 S. H. Simonson:		
For expenses from caches at Washington Cr.....	15.75	15.75
29. S. H. Simonson:		
For labor paid at Washington Creek moving cargo of Light- ning to trail.....	29.	29.
20.20 S. H. Simonson:		20.20
For purchase of supplies.....	20.20	
8.50 H. N. Ford:		8.50
For supplies to S. H. Simonson	8.50	
<hr/> 57678.05	<hr/> 322.96	<hr/> 57355.09

	General Average.	Owners.
57678.05	322.96	57355.09
Forward		
163.92		
For goods used from cargo for sustenance of men at Wash- ington Creek.....	163.92	163.92
725. S. H. Simonson:		
For services at Kerr cargo.....	725.	725.
4500. Dawson White Horse Nav. Co.:		
For service Str. Lightning going to relief of Str. Robert Kerr taking part of cargo off and to Washington Creek.....	4977.90	
Settled for.....	4500.	

	General Average.	Owners.
169.50 North American T. & T. Co.:		
For supplies to men working on cargo Str. Kerr.....		169.50
2724.34 For wages of crew sent from Daw- son to Str. Kerr:		
2d Mate to May 27th.....		154.25
Seaman to May 27th.....		134.50
3rd Fireman to May 27th.....		442.50
		<hr/> 731.25
	For'd	
	Forward	
<hr/> 65960.81	<hr/> 4822.96	<hr/> 58413.51

	Forward	General Average.	Owners.
65960.81		4822.96	58413.51
	For wages (Cont'd.)		
	For'd.		
	Oiler to May 27.....		731.25
	do to May 27.....		147.50
	do to May 27.....		130.
	do to May 27.....		147.50
	Deckhand to May 27.....		35.
	do to May 27.....		19.
	Messman to May 27.....		121.
	2 Deckhands to May 27.....		40.
	Deckhand to May 27.....		168.
	do to May 27.....		52.
	do to May 27.....		21.75
	Cook Sept. 12 to May 27.....		828.18
	Messboy to May 27.....		66.66

	General Average.	Owners.
Carpenter to May 27.....		157.50
Deckhand		59.
		<u>2724.34</u>
35. Judge Claypool:		
For rent of cabin for crew of Str.		
Kerr, in advance Oct. 12th to		
May 1st.....		35.
59.50 For labor cutting Str. Kerr from		
ice and sparring off shore,		
10/22		59.50
		<u>66055.31</u>
Forward	4822.96	61232.35

	General Average.	Owners.
66055.31 Forward.	4822.96	61232.35
11. R. W. Calderhead: For potatoes.....	11.	11.
5. Judge Claypool: For protest.....	5.	5.
52.50 P. McCarthy: For labor Feb. 13th to March 8th	52.50	52.50
242.50 H. E. Boucher: For labor on Str. Robt. Kerr, Sept. 12th to Dec. 19th at 75.00	242.50	242.50
7.25 M. Vandel: For freight on 7 pcs. bacon.....	7.25	7.25
32. J. O. Johnson: For 4 loads wood.....	32.	32.
<hr/> 66405.56 Forward	<hr/> 4827.96	<hr/> 61577.60

	General Average.	Owners.
66405.56	4827.96	61577.60
Forward		
551.39	551.39	551.39
Northern Commercial Co.:		
For stores for crew of Kerr....		
646.23	646.23	646.23
North American T. & T. Co.:		
For stores purchased from Jan.		
1st to May 18th.....		
10.75	10.75	10.75
North American T. & T. Co.:		
For supplies for crew.....		
50.50	50.50	50.50
E. W. Smith, Master:		
For traveling expenses Dawson		
to Circle City.....		
823.24	823.24	823.24
Andrew Larsen:		
For services Sept. 2d, '03, spar-		
ring from bank, protecting		
from running ice, etc., to May		
27, '04.....		
Forward	4827.96	63659.71
68487.67		

	Forward	General Average.	Owners.
68487.67		4827.96	63659.71
900.	W. A. Blair (Pilot): For services in relief, etc. and cargo		900.00
1235.	C. B. Atwell (2d Engineer): For services in relief steamer and cargo Sept. 22d, '03, to May 27, '04.....		1235.
900.	W. B. Jackling (Engineer): For services in relief steamer and cargo.....		900.
1646.48	E. W. Smith (Master): For services Sept. 22d to May 27th		1646.48
599.03	Pacific Cold Storage Co.: For provisions supplied to men.		599.03
<hr/> 73768.18	<hr/> Forward	<hr/> 4827.96	<hr/> 68940.22

	General Average.	Owners.
73768.18		
Forward		
15.50 L. H. Aubrey:	4827.96	68940.22
For expenses taking provisions to Simonson.....		15.50
4. H. E. Boucher:		
For 1 sk. flour to Simonson.....		4.
1500. Northern Commercial Co.:		
For services rendered to Str. Kerr while stranded.....		1500.
(Service of Str. Rock Island)		
100. For this statement.....	100.	
	<hr/>	
	6427.96	
<hr/>		
75387.68		<hr/>
		68959.72
		<hr/>

General Average.

Apportionment of

Vessel.	1500	pays	1006.94
Valued at			

Freight Included in Value of Cargo.

Cargo.			
Quantity forwarded, valued at Dawson,	130912		
Less duty.....		5708	
Less forwarding charge.....	54517		
	<hr/>		
	76395		

Delivered by Str. Robert Kerr, Valued			
at Dawson.....	4360	80755	pays
Less duty.....			5421.02
	<hr/>	<hr/>	<hr/>
		95755	6427.96

Equal to 6.71292%

St. Paul Fire & Marine Insurance Co:
 Insurance of \$60000 on Cargo Valued at 129564 pays 2505.08
 San Francisco, October 20th, 1904.

(Sgd) M. C. HARRISON & CO.
 By R. B. HOOPER, Atty,
 Adjusters of Averages.

*United States District Court, Western District of
Washington, Northern Division.*

No. 2822.

THE PACIFIC COLD STORAGE CO.,

Libelant,

vs.

ST. PAUL FIRE AND MARINE INS. CO.,

Respondent and Cross-Libelant.

Memorandum Decision on the Merits.

(Filed 10 Sept. 1906.)

The question of jurisdiction in this case has heretofore received attention, and I rendered a decision which I supposed would close the dispute on that subject, at least until the case reached an appellate tribunal, but on the final hearing the respondent persists in denying that this particular lawsuit is founded upon a maritime contract. Admitting that by the decision of the courts it has become settled law in this country that a policy of marine insurance if a maritime contract, and that suits founded upon such a policy are cognizable in a court of admiralty, it is now insisted that the "sue, labor and travel" clause usually inserted in such policies cannot be the foundation of a suit in a court of admiralty, on the theory that the insurer's liability under that clause of the policy arises from acts and expenditures sub-

sequent to the termination of the maritime contract. With equal propriety it might be said that the insurer's liability to pay in case of a total loss of ship or cargo destroyed by a disaster in mid-ocean does not become absolute until the assured has complied with all the requirements specified in the policy with regard to submitting satisfactory proofs of the loss, which must be done on land after the termination of the maritime venture. It is my understanding that a marine insurance policy in its entirety is a maritime contract, and that the "sue, labor and travel" clause is an essential element of the contract, and that the liability in case of a loss covered by the policy arises from the execution of the contract and the payment of the premium, and that there is no ground for the contention that the admiralty and maritime jurisdiction of the courts of the United States is so limited that rights founded upon any particular clause of such policy cannot be enforced by a suit in admiralty.

In ruling upon the exceptions to the cross-libel I said that, as then advised, I believed that the policy on which this suit is based may be considered as a separate contract of insurance of the libelant's goods while in transit up the Yukon River, just as if one policy had been issued insuring the goods while being carried on the "Elihu Thompson," and a separate policy insuring them while in transit upon the

“Robert Kerr,” as to which the risk would have commenced, if at all, at the time of reloading, at St. Michael, and that if the contract, is divisible, so that a distinct liability was assumed, when the goods were reloaded, the general rule of implied warranty of seaworthiness as a condition precedent should be applied to the case, and that if the “Robert Kerr” was unseaworthy at the time of commencing her voyage, such distinct liability of the insured did not attach. That qualified opinion was rendered to expedite the case, and I intended to reserve the question as to the validity of the special defence and the counterclaim based upon the alleged unseaworthiness of the “Robert Kerr” for further consideration at the final hearing. It is true, as stated in the argument submitted in behalf of the libelant, that one premium was paid for insurance of the cargo while in transit from the loading port to the final destination, and that circumstance would be controlling in the determination of the question if the policy did not contain an express declaration covering the point. The policy insures the cargo from the loading port to Dawson in the “Elihu Thompson” and connecting steamer, and contains the following clauses:

“Warranted free from particular average unless the vessel or craft be stranded, sunk or burnt, each craft or lighter being deemed a separate insurance.

Underwriters, notwithstanding this warranty, to pay for any damage or loss caused by fire or collision with any other ship or craft or with ice, or with any substance other than water, and any special charges for warehouse rent, reshipping or forwarding for which they would otherwise be liable; also to pay the insured value of any package or packages which may be totally lost in transshipment.”

Where a policy contemplates a voyage in different stages during which the subject matter insured will be exposed to different degrees or kinds of peril or the ship will require different kinds of equipment, the law implies a warranty as a condition of the risk that the vessel shall be seaworthy at the commencement of each stage, but whether the warranty of seaworthiness, in the case of a cargo policy applies to different vessels by which the cargo is to be carried to its destination, or only to the first vessel, is a question not determined by any decision to which my attention has been directed. On this subject see 19 *Amer. & Eng. Encyc. Law*, 1003 and 1004. In the absence of a rule sanctioned by authority, I assume that the first paragraph above quoted, although ambiguous, was intended to avoid the question at issue, and that it should be interpreted as an express agreement that the insurer assumed a separate risk with respect to each vessel, and that the policy must be deemed to be affected by an implied warranty of sea-

worthiness of the "Robert Kerr," at the time of starting up the Yukon River with the insured cargo on board.

The charge and specifications of unseaworthiness of the "Robert Kerr" contained in the answer and cross-libel are to the effect that her hull was hogged; that she was overloaded and burdened with a barge in tow; and that her boilers were in bad condition, the tubes being old and weak, so that they leaked, and she was unable to carry steam.

I find that it is proved by a clear preponderance of the evidence that the hull was not hogged, and that the vessel was not over burdened by reason of the weight of the cargo taken on board nor the tow, it being customary for the "Robert Kerr," and other steamers of her class, to navigate the Yukon River loaded as she was, and with a barge in tow. In giving consideration to the evidence relating to the condition of the boilers, it will be useful to recite the story of the voyage as told in the pilot-house log, and the engineer's log:

The "Robert Kerr" arrived at St. Michaels on her down trip August 12th, at 8:45 A. M.

The afternoon of that day the engineer was engaged in overhauling the feed pumps, cleaning and painting the boiler and the engine-room.

August 13th. Cleaned tube sheets, repairing

valves on seats of the donkey pumps, and doing work in cleaning and repairing.

August 14th. Repairing brick work in furnace, washing boilers and cleaning in general.

August 15th. Finished washing boiler and finished brickwork in furnace.

August 16th. Repairing tubes in center boiler, pressed, rolled and beaded seven tubes in starboard boiler, and one in port boiler.

August 18th. Put fire under main boilers, got 40 pounds of steam.

August 19th. Steam on main boilers. Ground in blow-up valve on main boilers.

August 22. The 'Elihu Thompson' arrived and Kerr' made fast alongside of her to take on cargo, keeping steam to run compressors, pumping down refrigerator rooms.

August 25. Finished loading. Left the 'Elihu Thompson' at noon. Landed alongside of wood barge in St. Michaels Bay at 1:15. Everything O. K. in engineer's department, waiting for fair weather. Steamer was then delayed three days by wind and sea.

August 28th. Steamer left her anchor and landed at dock at 3:15. She got in a bad position, and was extricated with the assistance of a tug. 4:45 A. M. started for Dawson. Engines making

ten turns, everything working well. At 1:05 P. M. stuck on flats, and had to wait for the tide.

August 29th. Still stuck on flats. Engineer taking advantage of the opportunity to wash boilers. Found considerable scale in all three boilers. Everything in fairly good order in engineer's department.

August 30. Steam ready at 11:30 A. M., the barge remained stuck.

August 31st. At 2:30 A. M. barge floated, got under way again and entered mouth of the river at 4:10 A. M. Everything working well in engineer's department. At 5:30 landed at wood pile, left at 8 A. M. At 11:10 stopped and took on eight cords of wood. At 11:50 moved back to wood pile. Left at 12:10. Stopped for wood at 3:20, left at 4:10. Everything all right in engineer's department.

Sept. 1st. From 1:30 to 2:30 P. M., took on 12-1/2 cords wood. At 5:55 to 7:30 P. M. took on 11 cords of wood. Tubes in main boiler leaking slightly.

Sept. 2d. From 1:40 to 4:05 P. M. took on 40 cords of wood. Boilers leaking. Unable to keep up steam. 6:15 stopped to fix tubes.

Sept. 3. Repairing tubes all day, considerable scale and mud in boilers. 9 P. M. steamed up, everything seemed all right. 9:50 started with 130 pounds of steam.

Sept. 4. Boilers working fairly, under full steam pressure. Landed for wood at 4:55 P. M., and took on 45 cords.

Sept. 5. Left woodyard at 12:45 A. M. 12:40 P. M. stopped at wood pile for 50 minutes. 3:10 P. M. stopped at wood pile, repacked starboard piston rod. 7:10 P. M. left wood pile, steaming up the river. Everything doing well in engineer's department.

Sept. 6. From 3:45 A. M. to 6:15 took 15 cords of wood. 4:50 P. M. grounded barge, had to move some freight.

Sept. 7. Barge floated at 7:30 A. M. started up the river at 1:15 P. M. Everything doing well in engineer's department.

Sept. 8. From 2 until 10:10 A. M. took on 41 cords of wood. 3. P. M. landed 12 tons of freight. Repacked port piston rod.

Sept. 9. Stopped to wash boilers, examined tubes in back end of boilers and found them tight. Steamer got loose from the bank, and drifted down stream until steam could be made to stop her. At 2:45 went ahead. 3:15 landed at wood pile, took on 38 cords. Went ahead at 4:20 P. M., everything working well.

Sept. 10. Took on four cords of green wood at \$10.00. Glad to get it. Everything in engineer's department appears all right.

Sept. 11. At 1 A. M. stopped for wood. Found none. Picked up some drift wood. Left at 4:00 A. M. 5 A. M. stopped on account of fog. Picked up drift wood. 6 A. M. started. 6:45 stopped on account of fog. 7:40 started; stopped, started at 9:15 A. M. 11 A. M. stopped, took on 9 cords of wood; 5 P. M. started. 9:10 P. M. stopped dark and foggy. Tube in port boiler leaking.

Sept. 12. Arrived at Fort Bibbon. Landed meat, hay and salt, took crew of white men, 21 cords of wood, started 1:25 P. M. 3:15 stopped, took on 50 cords of wood. Port boiler tube still leaking.

Sept. 13. Stopped all day and all night repairing boiler tubes, finished washing and repairing boilers, started fires at 11 P. M.

Sept. 14. At 2:35 A. M. steam up and started up the river, everything working fine and carrying 130 pounds of steam. Arrived at Rampart 4:30 P. M., left at 5 P. M. at 12, stopped on account of fog, took on 26½ cords of wood, four miles below Rampart.

Sept. 15. Started up the river at 4 A. M. Landed at wood pile at 5:15. Took on 24½ cords of wood. Started up the river at 9:30 A. M., continued running without stopping until 6 P. M. Everything working well in engineer's department. At 7:40 P. M. made fast for the night.

Sept 16. Foggy morning. Remained tied up until 10:30 A. M. At 11:35 grounded on a sand bar.

Floated at noon. At 3:15 P. M. stopped at wood-yard. Found no wood. 6:30 P. M. picked up a few cords of drift. Made fast for the night. All right in engineer's department.

Sept. 17. Started up river at 4:10. 8:20 A. M. to 9:30 stopped for wood and took on 7 cords. Blowed tubes in boilers. Calked small leak in end of steam draught. 6:40 P. M. stopped at Victorsburg for wood, and on account of darkness. Took on 7 cords. All right in engineer's department.

Sept. 18. Started at 4 A. M. 5 to 5:50 A. M. took on drift wood. 7:50 A. M. stopped to pick up drift-wood and fool away time. Took on 8 to 10 cords. Started at 2 P. M. 5 P. M. stopped for drift wood. Tubes in port boiler leaking.

Sept. 19. 4 A. M. Started up river. 6 A. M. snowing. 11:15 stopped at wood camp. 11:25 under way again. No wood. Engine working 13 turns per minute. Port boiler tubes leaking. 4:15 P. M. stopped at Harry's Britt's wood camp. Cold night, 26 degrees. Took on 54 cords of wood. Boilers cooled, preparatory to washing out and repairing tubes.

Sept. 20. Rolled tubes and drove ferrules in port boiler. Washed main boiler. Boilers tight when filled 8:25 A. M. started up the river. 9:45 stopped for wood. 35 minutes in making a landing. Took 14 cords. 1:15 P. M. started up the river. Passed Fort

Yukon at 5:35 P. M. Stuck on the bar at 5:50. Worked engines, stopping and backing for two hours. Made no effort to get steamer off after 8 P. M. All right in engineer's department.

Sept. 21. 4:55 A. M. Steamer afloat and pulling on barge. 7:55 A. M. steamer and barge off the dam fool bar. 8:05 on G. D. fool bar with broken rudder. 10:20 A. M. off the different bars and landed at Ft. Yukon. Decided to leave barge.

Went in slough and made the barge fast. Put on new rudder. Changed water in port midship siphon. Fixed valve which was leaking. Tubes in port boiler leaking.

Sept. 22. 5:30 A. M. Left the barge and started up the river. Stopped five minutes at Ft. Yukon. Tubes in wing boilers leaking. 6:30 touched bottom, and backed off and went ahead slow. 10:55 touched on sand bar. Backed off and went ahead slow. 10:40 on sand bar again. Backed off and went ahead full speed. 11:55 on bar again. 12:05 P. M. off bar and went ahead full speed. 12:50 stopped for wood, took 5 cords, went ahead at 1:45; 6:20 fast on sand bar in center of channel.

Sept. 23. Worked with spars but failed to get the steamer off the bar. Put packing on piston rods on main engine. Found the main boiler smoke box full of dirt. All tubes blocked. Blowed tubes in three boilers. Leaks seemly stopped.

Sept. 24. Put packing in valve on starboard engine. Port boiler leaking. Changed suction valves in donkey feed pump. Made repairs to leaking valve. Hailed steamer *Rock Island*. Got her to pull on *Kerr* with cable while the *Kerr's* men worked with spars. Moved very little. Water fell about two or three inches.

Sept. 25. "*Rock Island*" pulled on *Kerr* but could not get off. Bought from the *Rock Island* 1500 feet of three-quarters inch cable. *Rock Island* left, taking purser, carpenter and two deck hands. Water falling 2 inches per day. Tubes leaking slightly in wing boilers.

Sept. 26. Tubes in main boilers leaking. Sent dispatch to Dawson for assistance. Planted fastenings on bar, got wire cable fast and used spars. Moved steamer ahead about six feet. Water still falling.

Sept. 27. Sparring and pulling on cable. Steamer moved somewhat easier. Water falling steadily. Tubes in main boilers leaking.

Sept. 28. Sparring and pulling. Moving gradually. 6 P. M. got the steamer off the bar, fast to the bank, and all hands turned in tired out.

Sept. 29. Took in cable, and picked up drift wood. Moved the steamer to Pioneer Point. Cut wood until dark. Tubes in main boiler leaking.

Sept. 30. Still cutting wood, took 10 to 12 cords of poles. Left at 2 P. M. at 3 P. M. stopped and picked up more poles. Let fires go down to wash the boilers.

Oct. 1. Boilers cooled down and washed. Started fires at 6:15 A. M. Left landing for another try at 9:15 A. M. 10:35 A. M. stopped. River very low. Steamer cannot proceed on voyage without rising of river. Tubes leaking in port boilers.

Oct. 2, 8:15 A. M. Started carrying 130 to 180 pounds of steam, to get through swift places at Evans Bar. 9:40 stopped to pick up wood. Took 6 cords. 9:55 under way again. Port boiler tubes leaking. Carried 150 pounds of steam for three-quarters of an hour. Stuck on bar. Backed off. Stuck again. Backed, and went ahead for 20 minutes. Broke water glass on starboard boiler. 5 P. M. tied up at river bank. Tubes in port boiler leaking.

Oct. 3, 10 A. M. Went ahead, passed 30 Mile Bar at 12. Swift Water Slough at 1:45 P. M. 5:45 P. M. found Steamer Leah stuck trying the new channel around Twelve Mile Bar. Barely 4 feet of water in this channel, the 'Leah' got off, and went to the bank, and discharged part of her cargo. The Kerr tied up to wait for assistance.

Oct. 4, 1:55 P. M. Moved up river to try new channel 2:15 stopped to pick up wood. 6 P. M. tied up for the night. Tubes in main boilers leaking.

Oct. 5, 6:25 A. M. Left river bank to try new channel. 7:30 stopped and tied up to blow tube. 7:50 under way again. 11:20 stopped, river too low to proceed on voyage. Tubes in main boilers leaking. Thermometer 28 degrees above.

Oct. 6. Laying at river bank.

Oct. 7, 10:30 A. M. Steamer *Lightning* arrived to assist the *Kerr*. Part of the *Kerr's* cargo transferred to the *Lightning*.

Oct. 8, 9:30 A. M. Left landing to try to go up the river. 11 A. M. grounded in center of channel. Tubes leaking in main boilers. 1 P. M. backed down to river bank, and tied up, let fires die out on main boilers to repair leaking tubes.

Oct. 9. Lying at river bank. Fires out under main boilers. Transferring cargo to steamer *Lightning*. Repairing tubes in all three boilers. Plugged one tube in port boiler. 12:45 P. M. started for another try at bar. Backed down and tried another channel three times. Thermometer in open air 24 degrees above at 9:30 P. M.

Oct. 10. Lying at river bank, waiting to be light-cred over bar 11:15 A. M. got under way to try to get over bar. 12:10 P. M. landed to get wood. 1:30 started off for up river. Arrived at Circle City at 3 P. M. Commenced reloading cargo.

On account of low water and freezing weather it was deemed to be impracticable to complete the voy-

age to Dawson in the fall of 1903, and on arrival at Circle City the "Kerr" took on board part of the cargo of which she had been relieved by the "Lightning," and was then laid up for the winter in the mouth of a slough, which was the safest place in that vicinity. The "Lightning," with part of the "Kerr's" cargo, gained a distance of 120 miles above Circle City, but was finally obliged to tie up for the winter. A sufficient number of watchmen and caretakers were kept on board the "Kerr" during the winter, but the officers and most of the crew left her, and returned and again took charge of the boat when navigation opened in the spring, and then took her down the river to pick up the barge and with her tow the "Kerr" finally completed the voyage in May, 1904. The goods which were left on board the "Lightning," and about fifty tons of the "Kerr's" cargo, were transported to Dawson on sleds during the winter months at an expense of nearly fifty thousand dollars, and other expenses were incurred in various ways, by telegraphic communications to the owner of the cargo, and for provisions and fuel for the men who remained on board the "Kerr," and for traveling expenses of the officers and crew. The expense of forwarding the cargo to Dawson by sleds was incurred for the reason that it was apprehended that the vessels would be in danger of being crushed

by the gorging of ice, which usually happened before the opening of navigation in the spring-time.

The details of the voyage up the Yukon River noted in the log-books are proven by other evidence, and there is little ground for controversy as to the facts. The steamer encountered only the usual hindrances incident to a voyage against the current in a shallow river at the season of low water. The voyage was not broken up, but was finally completed after months of delay, and the cargo was delivered with the assistance of the "Lightning" and the sleds. The vessel was not delayed by leaking boilers, nor unseaworthiness, and she was not in imminent peril at any time from any extraordinary marine disaster contemplated in the policy of insurance. The contention of the libellant that the cargo was in peril from stranding of the vessel is in my opinion erroneous. The word "stranding" in a marine insurance policy comprehends the idea of putting the vessel ashore when in danger of sinking after she has been injured, when her officers voluntarily make for the shore to avoid a greater calamity, or the grounding of a vessel by coming accidentally upon a reef or rock or upon the shore, or the driving of a vessel ashore by force of a gale. A flat bottomed steamboat designed to navigate shallow rivers and inland waters is not stranded whenever in the prosecution of a voyage she touches the bed of the stream when by the use of

the equipment usually provided for such vessels she can extricate herself. 19 Amer. Eng. Encyc. Law, 2nd ed., p. 1068.

It must not be forgotten that the libelant in this case was the carrier of the cargo, and held to the liability which the law imposes upon owners of vessels employed as carriers of merchandise for hire. The carrier of an insured cargo is in duty bound to furnish a seaworthy vessel, properly manned and equipped for the voyage, and to persevere against the ordinary difficulties of navigation to the end of the voyage, and to deliver the cargo there, and the increased expense of the voyage incident to delays caused by defects of the vessel, or her propelling machinery, or lack of appliances usually carried as part of the equipment of vessels for similar voyages, or scantiness of fuel, or insufficient depth of water in a stream to float the vessel over said bars are burdens which the carrier assumed. Therefore, all such items as the price of a rope purchased for use in working the steamer off a bar, the wages of the crew, and the cost of provisions to feed them during the closed season are not to be charged to the insurer under the "sue and labor" clause of the policy. If the carrier was a party other than the owner of the cargo insured, there would be an implied assumpsit on its part to reimburse the cargo owner for all expenditures, of the kind indicated, as for money paid

for the carrier's use and benefit, because under the contract of affreightment the carrier would be primarily liable for such expenditures. In such a case an insurer of the cargo liable to the owner for such expenses paid in order to save the property would be subrogated to his right to be reimbursed by the carrier, but where the carrier is the owner of the cargo, holding a policy of insurance, the obligation of the carrier cancels the obligation of the insurer. *Potter vs. Providence Washington Ins. Co.*, Fed. Cas. 11,336.

It is the opinion of the Court that from the beginning to the end of the voyage in question there was no disaster, nor peril of navigation different from the ordinary and usual incidents of navigation on the Yukon River, and that there was no voluntary sacrifice nor extraordinary expenditure necessarily incurred to make a case for general average contribution, and that with respect to both of the general averages included therein, the adjustment made by Mr. Alexander is erroneous, and that the respondent is not liable to the libellant for any part of the items of expense included in the so-called general averages.

The sending of the steamer "Lightning" from Dawson to assist the "Kerr" when she was on a sand bar would have been entirely unnecessary, if the "Kerr" had been provided with a wire rope like the one purchased from the steamer "Rock Island," and

if the usual method of pulling steamers off from sand bars on the river had been followed at first as it was finally, instead of sending to Dawson for relief. Neither the "Kerr" nor her cargo were in jeopardy, and her crew were successful in getting her afloat before the "Lightning" arrived, by their own labor, using the rope purchased from the "Rock Island." The charter money paid for services of the "Lightning" and incidental expenses having been occasioned by only the ordinary difficulties of navigating the Yukon River in the season of low water, and by lack of necessary equipment for the service in which the "Kerr" was engaged are chargeable entirely to the libelant in the capacity of carrier, and for which there is no legal claim for contribution from the cargo.

By the failure to complete the voyage in the fall of 1903, the libelant's goods were exposed to a peril covered by the policy, viz: The peril of being overwhelmed and crushed by masses of ice, if left on board the vessels until the following spring. The evidence proves that when the ice in the Yukon breaks up preceding the opening of navigation in the springtime, it is piled up in great masses and travels down stream impelled by force of the current of the river, and the movement of such masses of ice endangers any vessel moored between the river's banks. The river usually freezes up in October, and steam-

ers failing to complete a voyage before that happens, and obliged to tie up for the winter, seek safety by going into sloughs where the water will be slack when the ice goes out. The "Kerr" and the "Lightning" were both placed in the most secure positions which they could get to, but they were not fully protected, and there was reasonable cause for apprehending their destruction, and loss of the goods on board, which I consider justified the expense of forwarding the goods by sleds to Dawson during the winter months. The cargoes might have been protected from the ice by being unladen and cached on land, but the nature of the goods was such that they would perish very soon, if not kept in cold storage, and it would have been difficult, if not impossible, to have kept them frozen until they could have been reloaded on vessels after navigation opened in the spring. Therefore the wisest thing which could have been done was to take the goods to Dawson, and that was done, with the knowledge and acquiescence of the respondent's agent. For the expense so incurred, the respondent is liable under the "sue and labor" clause of the policy, in proportion to the amount of the insurance to the value at risk. The value being the market value at the time and place of shipment plus the cost of insurance. 19 Amer. & Eng. Encyc. Law, 2d ed., 1046-7.

I hold that there is no merit in the contention that part of the cargo should have been jettisoned to make a case of general average, instead of particular average to reduce the amount of the loss chargeable to the insurer. The evidence does not justify a belief that anything could have been saved by such a sacrifice, and the law does not require a sacrifice of anything which can be saved merely to relieve the insurer at the expense of the carrier.

The insurer's proportion of the forwarding expenses as adjusted by Mr. Alexander, amounts to \$44,728.90, from which should be deducted \$15,000.00 paid on account, leaving a balance of \$29,728.90. I direct that a decree be entered in favor of the libellant for the last mentioned sum, with interest from the date of filing the libel, and costs, and dismissing the cross-libel.

C. H. HANFORD,
Judge.

[Endorsed]: Memorandum Decision on the Merits. Filed in the U. S. District Court, Western Dist. of Washington. Sept. 10, 1906. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

*United States District Court, Western District of
Washington, Northern Division.*

No. 2,822.

THE PACIFIC COLD STORAGE CO.,
Libelant,

vs.

ST. PAUL FIRE AND MARINE INS. CO.,
Respondent and Cross-Libelant.

Decree.

This cause having been heard upon the pleadings and proofs, and having been argued by the proctors of the respective parties and due deliberation being thereon had:

It is now ordered, adjudged and decreed by the court that the respondent, St. Paul Fire and Marine Ins. Co., pay to the libelant, The Pacific Cold Storage Co., the sum of thirty-three thousand and eighty-eight and 27/100 dollars (\$33,088.27), with interest from this date at the rate of six (6) per cent, per annum, together with costs of this action to be taxed.

It is further ordered and decreed that the cross-libel of said St. Paul Fire and Marine Ins. Co. against the said The Pacific Cold Storage Co. be, and the same is hereby, dismissed at the cost of said cross-libelant.

Ordered and adjudged in open court this September 10th, 1906.

C. H. HANFORD,
Judge.

[Endorsed]: Decree. Filed in the U. S. District Court, Western District of Washington, September 10, 1906. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

In the United States Circuit Court of Appeals for the Ninth Circuit.

PACIFIC COLD STORAGE COMPANY (a Corporation),

Libelant and Appellee,
vs.

ST. PAUL FIRE AND MARINE INSURANCE COMPANY (a Corporation),

Respondent and Cross-Libelant and Appellant.

Petition and Notice of Appeal.

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit.

Comes now the St. Paul Fire and Marine Insurance Company, respondent and cross-libelant herein, and respectfully shows as follows:

1. That on or before the 25th day of October, 1904, the libel in the above-entitled cause was filed in the United States District Court, Western Dis-

trict of Washington, Northern Division, by the Pacific Cold Storage Company against this respondent and cross-libelant, in a cause civil and maritime, for damages alleged to be due the said libelant from this said respondent, with interest and cost, as by reference to said libel will more fully appear.

2. That on or about the 10th day of November, 1904, this respondent duly appeared and presented exceptions, and thereafter, to wit, on or about the 18th day of March, 1905, filed its amended answer to said libel, and cross-libel, praying that the said libel be dismissed with costs, and seeking for affirmative relief against the libelant herein, as by reference to said amended answer and cross-libel will more fully appear.

3. That thereafter testimony was taken before a commissioner and such proceedings were had before the Honorable Cornelius H. Hanford, judge of the said District Court, that on the 10th day of September, 1906, a final decree was made and entered in said suit, whereby it was adjudged that the said libelant recover the sum of \$29,728.90, together with interest upon said sum from the date of filing the libel, and costs, and dismissing the cross-libel of the respondent.

4. That the above-named respondent and cross-libelant is advised and insists that the said final decree is erroneous in that it does not render a decree

in favor of respondent instead of rendering such decree for libelant.

5. For the reason herein contained and as further specified in the assignment of error which is filed herewith, the above-named respondent and cross-libelant St. Paul Fire and Marine Insurance Company, feeling aggrieved by the decree and opinion to which it refers, which said decree was made as aforesaid on the 10th day of September, 1906, does hereby appeal from said decree with the object of obtaining a reversal of the same and securing a decree for respondent on its cross-libel as claimed, to the United States Circuit Court of Appeals for the Ninth Circuit, and on said appeal intends to seek a new decision on the law and on the facts upon the pleadings and proofs in said District Court and upon new pleadings and proofs to be introduced in this court.

Said respondent prays that its appeal may be allowed and that the records in this said cause may be duly transcribed and certified to said United States Circuit Court of Appeals for the Ninth Circuit, to be there heard, upon the pleadings and proofs as shown by such records; and that the District Court be allowed to prescribe the penalty of the appeal bond to be given herein.

Dated at Seattle, King County, State of Washington, this 18th day of October, 1906.

IRA BRONSON and

D. B. TREFETHEN.

Proctors for Respondent and Cross-libelant and Appellant.

[Endorsed]: Petition and Notice of Appeal. Filed in the U. S. District Court, Western District of Washington, October 18th, 1906. R. M. Hopkins, Clerk. A. N. Moore, Deputy Clerk.

In the United States District Court for the Western District of Washington, Northern Division.

No. 2822.

THE PACIFIC COLD STORAGE CO.,

Libelant and Appellee,

vs.

ST. PAUL FIRE AND MARINE INSURANCE
CO.,

Respondent and Cross-Libelant and Appellant.

Assignment of Errors.

Comes now the above-named St. Paul Fire and Marine Insurance Company, respondent, cross-libelant and appellant in the above-entitled cause, and says that in the record and proceedings in this said cause, and in the decree and opinion made and entered

by the Hon. C. H. Hanford, District Judge of the United States for the Western District of Washington, Northern Division, on the 10th day of Sept., 1906, in the above-entitled cause, there are manifest errors in the following particulars.

1. That the award, in the sum of \$29,728.90, together with interest from the date of filing the libel and costs and dismissing the cross-libel, said award and decree being made in favor of the Pacific Cold Storage Company, is contrary to the law and to the evidence in said cause.

2. In that the proper award in this cause depends upon the particular fact in the case and those facts do not warrant the making of an award in favor of the said The Pacific Cold Storage Company, libelant and appellee, but that the said award should have been made in favor of the St. Paul Fire and Marine Insurance Company, respondent, cross-libelant and appellant.

3. In that the District Judge erred in entering a decree in favor of the said The Pacific Cold Storage Company and against the St. Paul Fire and Marine Insurance Company for the sum of \$29,728.90 with interest from the date of filing the libel, and costs and dismissing the cross-libel of respondent.

4. That the District Judge erred in not directing a decree to be entered in favor of the St. Paul Fire

and Marine Insurance Company, respondent, as prayed for in its cross-libel.

5. For other errors appearing upon the record.

Wherefore said appellant St. Paul Fire and Marine Insurance Company prays for the aforesaid errors founded in the records of said cause and said decree, that the said decree may be reversed and such judgment entered as ought to have been rendered by the said United States District Court for the Western District of Washington, Northern Division; and for such other and further relief as may be proper in the premises.

IRA BRONSON and

D. B. TREFETHEN,

Proctors for Appellant, St. Paul Fire and Marine Insurance Company.

[Endorsed]: Assignment of Errors. Filed in the U. S. District Court, Western District of Washinton, October 18, 1906. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

PACIFIC COLD STORAGE COMPANY,

Libelant,

vs.

ST. PAUL FIRE AND MARINE INSURANCE
COMPANY (a Corporation),

Respondent and Cross-Libelant.

Order Allowing Appeal to be Taken.

This cause having come on to be heard on this 18th day of October, 1906, upon the petition of the St. Paul Fire and Marine Insurance Company, respondent and cross-libelant in the above-entitled cause, that it be allowed to appeal from the decree of this Court made and entered on the 10th day of September, 1906, wherein and whereby there was awarded to the Pacific Cold Storage Company by this Honorable Court the sum of \$29,728.90, together with interest from the date of the filing of the libel in this said cause, and costs, and dismissing the cross-libel herein, and it duly appearing that such petition for an appeal from said decision has been filed with the clerk of this court on this date, and the court being duly advised in the premises;

Now, therefore, it is ordered and directed that such respondent be, and hereby is, allowed to take

such an appeal from such decree as aforesaid and that the appeal bond to be given on said appeal be fixed at the sum of five hundred dollars.

C. H. HANFORD,
Judge.

[Endorsed]: Order Allowing Appeal to be Taken. Filed in the U. S. District Court, Western District of Washington, October 18, 1906. R. M. Hopkins, Clerk. By A. N. Moore, Deputy Clerk.

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

PACIFIC COLD STORAGE COMPANY,
Libelant and Appellee,

vs.

ST. PAUL FIRE AND MARINE INSURANCE
COMPANY (a Corporation),
Respondent and Appellant.

Order Fixing Amount of Supersedeas Bond.

This cause having come on to be heard on this 22d day of October, 1906, upon the motion of St. Paul Fire and Marine Insurance Company, by its attorneys, Ira Bronson and D. B. Trefethen, that the bond on appeal superseding the judgment heretofore rendered against the said St. Paul Fire and Marine In-

insurance Company, be fixed by this Court, and the Court being duly advised in the premises;

Now, therefore, it is ordered and directed that said bond superseding said judgment shall be given by the St. Paul Fire and Marine Insurance Company in the sum of fifty thousand dollars.

Done in open court this 22d day of October, 1906.

C. H. HANFORD,

Judge.

[Endorsed]: Order Fixing Amount of Superseas Bond. Filed in the U. S. District Court, Western District of Washington, October 22, 1906. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

PACIFIC COLD STORAGE COMPANY,

Libelant,

vs.

ST. PAUL FIRE AND MARINE INSURANCE
COMPANY (a Corporation),

Respondent and Cross-Libelant.

Bond on Appeal.

Know all men by these presents: That we, St. Paul Fire and Marine Insurance Company, a corporation, as principal, and Fidelity Deposit Company of Mary-

land, a corporation, as surety, are held and firmly bound unto the Pacific Cold Storage Company, a corporation, in the full and just sum of fifty thousand five hundred dollars (\$50,500.00), to be paid to the said Pacific Cold Storage Company, and to their attorneys, successors and assigns, to which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally.

Sealed with our seals and dated this 22d day of October, 1906.

Whereas, lately in the District Court of the United States for the Western District of Washington, Northern Division, in a suit pending in said court by the Pacific Cold Storage Company against the St. Paul Fire and Marine Insurance Company, a decree was rendered by the Honorable C. H. Hanford, Judge of the United States District Court for the Western District of Washington, Northern Division, to the effect that there was entered in favor of the libelant a decree for the sum of \$29,728.90, with interest from date of filing the libel, and costs, and dismissing the cross-libel of the respondent St. Paul Fire and Marine Insurance Company, said decree having been made and entered on the 10th day of September, 1906, and the said principal herein having obtained an

appeal and filed a copy thereof in the clerk's office of the above-entitled court to revise the said decree made and entered on the 10th day of September, 1906, in the aforesaid suit; and said principal herein having obtained a citation directed to the said Pacific Cold Storage Company, citing and admonishing it to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit within thirty days from the date hereof.

Now, therefore, the condition of this obligation is such that if the said St. Paul Fire and Marine Insurance Company shall prosecute its appeal to effect, and shall pay the cost and answer all damages if the appeal is not sustained, holding and saving the said Pacific Cold Storage Company harmless from damages by reason of the said appeal; and if the said principal herein will satisfy and perform the judgment or order appealed from in case it shall be affirmed, and any judgment or order which the United States Circuit Court of Appeals for the Ninth Circuit may render or make, or order to be rendered or made by the United States District Court for the Western District of Washington, Northern Division,

then the above obligation to be null and void; otherwise to be and remain in full force, virtue and effect.

ST. PAUL FIRE AND MARINE INSURANCE COMPANY,

By D. B. TREFETHEN,

Its Attorney,

Principal.

FIDELITY AN DEPOSIT COMPANY OF MARYLAND,

By DAVID P EASTMAN,

Attorney in Fact.

JOHN A. WHALLEY,

Attorney in Fact and General Agt., Surety.

The above bond is hereby approved this 22d day of October, 1906, and this said appeal is hereby allowed.

C. H. HANFORD,

District Judge of the United States District Court,
Western District of Washington, Northern Division.

[Endorsed]: Bond on Appeal. Filed in the U. S. District Court, Western District of Washington, October 22, 1906. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

*In the United States District Court for the Western
District of Washington, Northern Division.*

No. 2822.

THE PACIFIC COLD STORAGE COMPANY,
Libelant and Appellee,

vs.

ST. PAUL FIRE AND MARINE INSURANCE
COMPANY,
Respondent and Cross-Libelant and Appellant.

Citation to Appellee (Copy).

United States of America,—ss.

To the Pacific Cold Storage Company, Libelant and
Appellee, and to Bogle, Hardin and Spooner,
Its Proctors, Greetings:

Whereas the St. Paul Fire and Marine Insurance
Company, respondent, cross-libelant and appellant,
has lately appealed to the United States Circuit Court
of Appeals for the Ninth Circuit from a decree made
and entered by the Hon. C. H. Hanford, Judge of
the District Court of the United States for the West-
ern District of Washington, Northern Division, said
decree being rendered on the 10th day of Sept., 1906,
and wherein and whereby there is rendered in favor
of The Pacific Cold Storage Company a decree for
the sum of \$29,728.90, together with interest from

the date of filing the libel, and costs and dismissing the cross-libel of this respondent and appellant and to whom notice is here being given; and,

Whereas the St. Paul Fire and Marine Insurance Company has filed the security required by law:

Now, therefore, you are hereby cited to appear before the United States Circuit Court of Appeals for the Ninth Circuit at the City of San Francisco, California, within thirty days from date hereof to do and receive what may appertain to justice to be done in the premises.

Given under my hand this 22d day of Oct., 1906.

[Seal]

C. H. HANFORD,

Judge of the District Court, Western District of Washington, Northern Division.

[Endorsed]: Citation to Appellee. Filed in the U. S. District Court, Western Division of Washington. October 22, 1906. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

PACIFIC COLD STORAGE COMPANY (a Cor-
poration),

Libelant and Appellee,

vs.

ST. PAUL FIRE AND MARINE INSURANCE
COMPANY (a Corporation),

Respondent and Appellant.

Notice of Filing Bond on Appeal.

To the Pacific Cold Storage Company and to Bogle,
Hardin and Spooner, Its Proctors, Notice:

You, and each of you, will please take notice that on this 22d day of October, 1906, the St. Paul Fire and Marine Insurance Company, respondent and cross-libelant in the above-entitled cause, has filed a bond for the costs and damages on appeal in the sum of fifty thousand, five hundred dollars, in the clerk's office of the United States District Court for the Western District of Washington, Northern Division, a copy of which bond on appeal is herewith served upon you.

You are further notified that the name and residence of the surety named in said bond are as follows, to wit:

Fidelity and Deposit Company of Maryland, with its home office in Baltimore, Maryland.

IRA BRONSON, and
D. B. TREFETHEN,
Proctors for Appellant.

Due service of a copy hereof admitted this 22d day of Oct., 1906.

W. H. BOGLE,
Attorney for Appellee.

[Endorsed]: Notice of Filing Bond. Filed in the U. S. District Court, Western District of Washington, October 22, 1906. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

*In the District Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

PACIFIC COLD STORAGE COMPANY (a Cor-
poration),

Libelant and Appellee,

vs.

ST. PAUL FIRE AND MARINE INSURANCE
COMPANY (a Corporation),

Respondent and Appellant.

Acceptance of Service.

We hereby accept service of a filed copy of a petition and notice of appeal, filed copy of bond on appeal, copy of notice of filing bond, filed copy of assignment of errors, filed copy of citation to appellee, order fixing amount of supersedeas bond, and filed copy of order allowing appeal to be taken.

W H. BOGLE,
Proctors for Appellee.

[Endorsed]: Acceptance of Service. Filed in the U. S. District Court, Western District of Washington, October 22, 1906. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

*In the District Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

No. 2822.

PACIFIC COLD STORAGE COMPANY (a Cor-
poration),

Libelant and Appellee,

vs.

ST. PAUL FIRE AND MARINE INSURANCE
COMPANY (a Corporation),

Respondent and Appellant.

Order to Transmit Original Exhibits.

Upon the stipulation of the parties now filed in this cause, it is ordered that the clerk of the Court transmit with the apostles and records on appeal the original exhibits filed in this cause and transmit the same to the clerk of the United States Circuit Court of Appeals for the use of the Court upon the hearing of this cause on appeal.

Done in open Court this 22d day of November, 1906.

C. H. HANFORD,
Judge.

Due service of a copy hereof admitted this 23d day of November, 1906.

W. H. BOGLE,
Attorney for Libelant.

[Endorsed]: Order. Filed in the U. S. District Court, Western District of Washington, November 22, 1906. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

*In the District Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

No. 2822.

THE PACIFIC COLD STORAGE COMPANY
(a Corporation),

Libelant and Appellee,

vs.

ST. PAUL FIRE AND MARINE INSURANCE
COMPANY (a Corporation),

Respondent, Cross-Libelant and Appellant.

Clerk's Certificate to Apostles on Appeal.

United States of America,
Western District of Washington,—ss.

I, R. M. Hopkins, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify the foregoing 609 type-written pages, numbered from 1 to 609, inclusive, to be full, true and correct copies of so much of all the files, records and proceedings, and the entire record, in the above and therein entitled cause, as is required to be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit upon the Appeal of the above-entitled cause, by Rule 4 of the Admiralty Rules of said Court, save and excepting

the original exhibits, which by order of the above District Court, a copy of which will be found on page 609 of the foregoing transcript, I am directed to forward to the United States Circuit Court of Appeals for the Ninth Circuit together with the Apostles on appeal herein, as a part thereof; and that the foregoing pages together with said original exhibits, constitute the apostles on appeal taken in said cause by the St. Paul Fire and Marine Insurance Company, a corporation, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that I hereto annex and herewith transmit the original citation issued in said cause.

I further certify that the cost of preparing and certifying the foregoing apostles on appeal is the sum of four hundred and fifty-eight dollars, and that the same has been paid to me by Ira Bronson, Esq., and D. B. Trefethen, Esq., proctors for respondent, cross-libelant and appellant above named.

In witness whereof, I have hereunto set my hand and affixed my official seal, at Seattle, in said District, this 5th day of December, 1906.

[Seal]

R. M. HOPKINS,

Clerk.

*In the United States District Court for the Western
District of Washington, Northern Division.*

No 2822.

THE PACIFIC STORAGE COMPANY,

Libelant and Appellee,

vs.

ST. PAUL FIRE AND MARINE INSURANCE
COMPANY,

Respondent, Cross-Libelant and Appellant.

Citation to Appellee (Original).

United States of America,—ss.

To the Pacific Cold Storage Company, Libelant and
Appellee, and to Bogle, Hardin and Spooner, its
Proctors, Greetings:

Whereas the St. Paul Fire and Marine Insurance
Company, respondent, cross-libelant and appellant
has lately appealed to the United States Circuit
Court of Appeals for the Ninth Circuit from a de-
cree made and entered by the Hon. C. H. Hanford,
Judge of the District Court of the United States for
the Western District of Washington, Northern Divi-
sion, said decree being rendered on the 10th day of
Sept., 1906, and wherein and whereby there is ren-
dered in favor of the Pacific Cold Storage Company

a decree for the sum of \$29,728.90, together with interest from the date of filing the libel, and costs and dismissing the cross-libel of this respondent and appellant and to whom notice is here being given; and,

Whereas the St. Paul Fire and Marine Insurance Company has filed the security required by law:

Now, therefore you are hereby cited to appear before the United States Circuit Court of Appeals for the Ninth Circuit at the city of San Francisco, California, within thirty days from date hereof to do and receive what may appertain to justice to be done in the premises.

Given under my hand this 22nd day of Oct., 1906.

[Seal]

C. H. HANFORD,

Judge of the District Court, Western District of Washington, Northern Division.

[Endorsed]: No. 2822. In the District Court of the United States, for the Western District of Washington, Northern Division. The Pacific Cold Storage Co., Libelant, vs. St. Paul Fire and Marine Ins. Co., Respondent. Citation to Appellee. Filed in the U. S. District Court, Western Dist. of Washington. Oct. 22, 1906. R. M. Hopkins, Clerk. A. N. Moore, Deputy.

[Endorsed]: No. 1417. United States Circuit Court of Appeals for the Ninth Circuit. St. Paul

Fire and Marine Insurance Company, Appellant, vs.
The Pacific Cold Storage Company, Appellee.
Apostles on Appeal. Upon Appeal from the United
States District Court for the Western District of
Washington, Northern Division.

Filed December 31, 1906.

F. D. MONCKTON,
Clerk.

